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With this issue the CENTRAL LAW JOURNAL enters upon its majority, being just twenty-one years old. In view of this fact it may be permitted us at this time to indulge in a few pertinent remarks concerning ourselves.

The CENTRAL LAW JOURNAL was established in January, 1874, as a local law newspaper. Its proprietors, however, looking into the future, soon began a struggle for a larger and more comprehensive field. To this end, in addition to the opposition which every new venture excites, it was compelled to overcome the prejudices of many who found it difficult to believe that any good in the shape of legal elucidation could come from this section of the country. But in time this obstacle was removed, and from a purely local journal grew one which can be said to be national in character and scope. Though published in St. Louis, it is at the same time a cosmopolite. Its list of subscribers reveals that it is as well known in New York, Chicago, San Francisco and other cities as in St. Louis, and that its friends are to be found in every State. We believe that this result has been accomplished through a knowledge, attained by experience, of what the profession want in a law journal of this character. Appreciating the fact that this is a busy, practical age, and that the law, though a profession, is also in some degree at least a business, our aim has been to supply that which is practical, rather than theoretical; to enable our readers to know what the courts have done and are now doing in the determination of the practical modern questions of law; to save the time of the busy practitioner by placing before him in condensed form the fruits of litigation, and thus enable him the easier and better to solve questions which mean to him not only honor and success but also existence. The tenacity with which our friends continue with us and the constant and steady growth in their number convinces us that we have not mistaken their needs, in the shape of a law newspaper, and therefore we shall continue in the future along the lines above laid down, with a determination, however, toward further and constant improvement.

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It seems that the validity of the new federal income tax law is to be tested in a suit already begun in the District of Columbia, seeking to restrain the Commissioner of Internal Revenue from collecting the tax. The grounds upon which the constitutionality of the law is assailed are three in number. In the first place the petitioner insists that he is denied the equal protection of the law in that various corporations in which he is a shareholder are by section 29 of the new tariff law required to pay a tax of 2 per cent. on their net earnings respectively, without regard to any dividends paid out of such net earnings, and by sections 27 and 28 of the act the petitioner is required to pay a like tax upon the moneys so paid to him as dividends by the corporations respectively, thus duplicating the tax on the petitioner, and that this taxation is unjust and unequal, in that it discriminates against the petitioner, for the purposes of taxation, and other persons who are citizens of the United States, and wholly exempts such persons from taxation who have an income to any amount up to and not in excess of the sum of $4,000 per annum. In the next place the petitioner complains that the income tax provisions contained in sections 27 and 28 are invalid for the reason that there is associated with the taxation of citizens of the United States, and subject to that proposed taxation and not separable therefrom, the provision that persons who are aliens, but who reside in the United States, whether permanently or only temporarily, shall likewise be subject to the payment of the tax on an income in excess of $4,000 per annum, although such income is derived wholly from rents, interests, dividends, salaries, or from any profession, trade, employment or vocation carried on elsewhere than in the United States, and that this is in effect undertaking, unlawfully and without authority, to tax the incomes of citizens of foreign countries alien to the United States who may have within the United States a temporary residence for temporary purposes, although such incomes are derived wholly from sources not within the jurisdiction of the United States. Finally, the point is made that the law, as appears by section 32, provides no exemption from the taxation of incomes of corporations within the United States, of which there are many, which although carried

on for profit, are created, owned and operated by the several States of the Union respectively as instrumentalities and agencies of the governments of such respective States, and in promotion of the police and other public functions and policies of such States, and which corporations, so being agencies of the governments of the respective States, are not subject to taxation by the United States, and that, further, by the provisions of the law, assessments are to be made upon the income of the petitioner and others that had been earned and received by them prior to the time at which the provisions of the act took effect, and that all the taxes mentioned, attempted to be assessed and collected upon incomes, are not within the constitutional jurisdiction of congress to impose. The passage of this bill by congress has been followed by widely divergent views as to its validity and wisdom. The decision of the above case will therefore be awaited with much interest.

NOTES OF RECENT DECISIONS.

NEGOTIABLE INSTRUMENT—PAROL EVIDENCE TO EXPLAIN.—In Swarts v. Cohen, 38 N. E. Rep. 536, it is decided by the Appellate Court of Indiana that a note signed, "Nat. F. & I. Co., M. S., President," is ambiguous, and extrinsic evidence is admissible, under proper averments, to show that it is a note of M. S. The court says:

It seems to be well settled by the decisions in this State that when a note is signed by an individual maker with such a word as "trustee," "president," or "secretary" immediately following the signature, such word is generally considered as merely descriptive of the person of the maker, and the note is the obligation of the person so signing it. Kendall v. Morton, 21 Ind. 205; Hays v. Crutcher, 54 Ind. 260; Hayes v. Matthews, 63 Ind. 412; McClellan v. Robe, 93 Ind. 298; Williams v. Bank, 83 Ind. 237. But when it is apparent from the manner of the signature or from the body of the instrument, or from the use of the corporate seal, that it was the intention of the contracting parties that the note should bind the corporation alone, then the person signing will not be liable. Means v. Swormstedt, 32 Ind. 87; Gaff v. Theis, 33 Ind. 307; Pearse v. Welborn, 42 Ind. 331; Armstrong v. Kirkpatrick, 79 Ind. 527. It is difficult to lay down a general rule that will govern all cases. The primary purpose in construing a written instrument or contract is to ascertain the intention of the contracting parties. If a written instrument is clear and unambiguous in its terms and meaning, there is no occasion for construction. The appellees contend that the note in suit is the joint note of both the appellant and the National Forge & Iron Company, while the appellant insists that it is the note of the corporation alone. The note in suit differs from any of the Indiana cases to which our attention has been called. In looking into the adjudications of other States we find that much conflict and confusion exist. In Falk v. Moebs, 127 U. S. 597, 8 Sup. Ct. Rep. 1319, it is said that this conflict amounts to almost anarchy of the authorities. In the following cases notes and bills of exchange similarly signed as the one in suit were held to be the obligation of the corporation alone: Draper v. Steam Heating Co., 5 Allen, 338; Rendell v. Harriman, 75 Me. 497; Castle v. Foundry Co., 72 Me. 167; Sturdivant v. Hull, 59 Me. 172; Carpenter v. Farnsworth, 106 Mass. 561; Liebscher v. Kraus, 74 Wis. 387, 43 N. W. Rep. 166. Many other cases might be cited to the same effect. On the other hand, notes and bills somewhat similarly signed have been held to be the individual obligation of the person signing them, or the joint obligation of the corporation and the individual. Chase v. Pattburg, 12 Daly, 171; Kean v. Davis, 21 N. J. Law, 683; Fiske v. Eldridge, 12 Gray, 474; Manufacturing Co. v. Fairbanks, 98 Mass. 101; De Witt v. Walton, 9 N. Y. 571; McClellan v. Reynolds, 49 Mo. 312; Heffner v. Brownell, 70 Iowa, 591, 31 N. W. Rep. 947; Heffner v. Brownell, 75 Iowa, 341, 39 N. W. Rep. 640; McCandless v. Canning Co., 78 Iowa, 161, 42 N. W. Rep. 635. In many of the cases the decision of the court turns on a very slight change in the terms of the instrument or the manner in which it is signed. If a written instrument is uncertain, or its meaning cannot be definitely determined upon its face, extrinsic evidence may, under proper averments, be given, not to vary the terms, but to clear up the ambiguity. This is especially true where the action is between the original parties to the contract. Daniel, Neg. Inst. § 418; Pars. Notes & B. 168; Haile v. Peirce, 32 Md. 327; Hardy v. Pilcher, 57 Miss. 18; Baldwin v. Bank, 1 Wall. 234; Mechanics' Bank of Alexandria v. Bank of Columbia, 5 Wheat. 326; Metcalf v. Williams, 104 U. S. 93; Brockway v. Allen, 17 Wend. 40. Courts of equity will sometimes relieve against mistakes of law, and will reform a written instrument so as to make it conform to or speak the intention of the parties. This is particularly true when words are used to express a contract previously made. 1 Story, Eq. Jr. § 115; 2 Pom. Eq. Jur. § 845. In Lee v. Percival (Iowa), 52 N. W. Rep. 543, suit was instituted upon a note as follows: "Six months after date we promise to pay Lee Jameson or order three hundred and fifty dollars, . . . " signed as follows: "Herndon Natural Gas & Land Company. F. A. Percival, President. Alexander Hastie, Secretary." It was held that Percival and Hastie were *prima facie* liable, but might have the note reformed so as to express the true intent of the parties, and that parol evidence was admissible for the purpose of showing that the note was the obligation of the corporation alone. So where a note was signed, "W. T. Boutell, Pres.," it was held proper for the signer to show by parol that he was the president of a corporation, and signed for the corporation. Collender Co. v. Boutell (Minn.), 47 N. W. Rep. 261. A note read: "We promise to pay to the order of A. J. Boardman, treasurer. . . . [Signed] Minneapolis Engine & Machine Works, by A. L. Crocker, Secretary," and indorsed, "A. J. Boardman, Treasurer." The indorsement was held to be *prima facie* the indorsement of Boardman, but that extrinsic evidence was admissible to show that he made it only in his official capacity as treasurer, and that the indorsement was that of the corporation alone. Bank v. Boardman (Minn.), 48 N. W. Rep. 1116. In Liebscher v. Kraus, 74 Wis. 387, 43 N. W. Rep. 166, the action

was on a note in these words: "Ninety days after date we promise to pay to Leo Liebscher or order the sum of six hundred and thirty-seven dollars and forty cents, value received. [Signed] San Pedro Mining & Milling Company. F. Kraus, President." This was decided to be the note of the corporation alone, and not the joint note of the corporation and Kraus; that there was no ambiguity, and that parol evidence was inadmissible to show that Kraus did not sign the name of the company, but signed his own name as a joint maker. In Heffner v. Brownell, 75 Iowa, 341, 39 N. W. Rep. 640, and the same case in 70 Iowa, 591, 31 N. W. Rep. 947, the note was in substance as follows: "· · · We promise to pay Daniel Heffner or bearer two hundred dollars. · · · [Signed] Independence Mf'g. Co. B. S. Brownell, Pres. D. B. Sanford, Secy." This was held to be the joint note of the corporation and of the other persons signing the same; that there was no ambiguity appearing upon the face of the instrument, and that extrinsic evidence was inadmissible to show the intention of the parties. Matthews v. Mattress Co. (Iowa), 54 N. W. Rep. 225, was an action on a note very similar to the one in suit. It read as follows: "Ninety days after date we promise to pay to the order of J. T. Matthews & Co. two hundred and ninety and eighty-seven one-hundredths dollars. Payable at the office of the Dubuque Mattress Co., Dubuque, Iowa. Value received. Accepted March 21, 1889. Dubuque Mattress Co. John Koff, Pt." This was held to be the note of Koff as well as of the corporation, and that parol evidence was not admissible to show that the corporation was the only promisor. There is, however, an able dissenting opinion, in which the position is taken that the note is ambiguous on its face, and that parol evidence should have been admitted to clear up the ambiguity. We are of the opinion that the note in suit is ambiguous. It was upon that theory that the case proceeded, was tried, and determined in the court below. The appellee declared in his complaint that the appellant executed the note. If John Doe should execute his promissory note in the name and style of Richard Roe, he would be liable thereon, and extrinsic evidence would be admissible to show the manner of the execution under proper averments in the pleadings. As was said by the Supreme Court in Gaff v. Theis, *supra:* "A party may, we suppose, execute a note in any name other than his own, and yet be bound by it." It is readily conceivable that the note in suit might have been executed by both the corporation and by Swarts, and be their joint obligation. In such a case, affixing the word "president" to his name does not make it the note of the corporation only, but under proper averments it may be shown to be the obligation of the individual as well, and this may be made to appear by extrinsic evidence.

CRIMINAL LAW—OFFICER OF INSOLVENT BANK — RECEIVING DEPOSITS.—One of the points decided by the Supreme Court of Wisconsin in Koetting v. State, 60 N. W. Rep. 822, is that on trial of an officer of a bank for receiving money knowing the bank to be insolvent, proof that defendant received money as a general deposit will not sustain a charge that he received it "on deposit and for safe-keeping." Cassoday and Newman, JJ., dissent. Orton, C. J., says:

The fatal error in this case is the want of any evidence to sustain the charge in the information. The charge in the information is that John B. Koetting, as cashier and an officer of the South Side Savings Bank of the city of Milwaukee, on the 21st day of July, 1890, unlawfully, feloniously, and fraudulently did accept and receive in, into, and for, on account and in the name of said bank, on deposit and for safe-keeping, of and from one Charles B. Fritsch, two hundred and fifteen dollars, when he knew or had good reason to know that said bank was unsafe or insolvent. This is the substance of the charge, but the words in italics are exact. The language of the statute (section 4541 Rev. St.) is as follows: "Shall accept or receive on deposit, or for safe keeping, or to loan, from any person, any money," etc. The offense consists of any one of three acts: First, to accept or receive on deposit any money, etc.; second, to accept or receive, for safe-keeping, any money, etc.; third, to accept or receive, to loan, any money, etc. These provisions relate to money "and to bills, notes, and other paper circulating as money." The other part of the section relates to notes, drafts, bills of exchange, bank checks, and other commercial paper. To accept or receive any of these into the bank for safe-keeping or for collection, knowing the bank to be unsafe or insolvent, is also made a crime, but these are immaterial to this information. The only argument of the learned district attorney to sustain the conviction on the evidence is that the information charges two acts: First, a deposit of money only and simply; second, a deposit of money for safe-keeping; and that the first was sustained by evidence. In charging two distinct acts, each of which constitutes the crime, each one should be separately charged by the use of all the words essential to constitute the crime. Here there is only one act charged,—one deposit of money, and that one is for safe-keeping. The word "for safe-keeping" clearly qualify the word "deposit" as the character or purpose of the deposit. When several acts are charged conjunctively, they constitute but one offense. State v. Bielby, 21 Wis. 204. To charge that the defendant aided in the escape of J and R is one offense. Oleson v. State, 20 Wis. 58. All the facts which constitute the offense must be stated with precision. Fink v. Milwaukee, 17 Wis. 26. "A special deposit is where the whole contract is that the thing shall be 'safely kept,' and the identical thing returned to the depositor." "A deposit is presumed to be general." "A deposit is general unless expressly made special or specific." 1 Morse, Banks, §§ 183-186. When the deposit is a general one, the bank has the right to mingle the money deposited with its own, and treat it as a debt due the depositor. The distinction between a general and special deposit is manifest and material. The same deposit could not be both general and special, and here there is but one deposit, and one kind of deposit, and that was special, because it was for safe-keeping, as that is the definition of a special deposit. The offense should be described with such certainty and exactness that the accused may know what the offense is, and prepare to meet it, and that his conviction may be a bar to another prosecution for the same offense. It is quite clear that the offense charged in the information is of having received the money into the bank on deposit for safe-keeping, and that there is no other offense described or charged.

It seems to be conceded that there were no evidence whatever to prove the offense so described in the information. The court was requested by the

defendant's counsel, on the conclusion of the testimony, to direct a verdict of not guilty, upon the ground that there was no evidence whatever of the specific offense contained in the information. The court refused this request. This was error. In Jackson v. State, 55 Wis. 589, 13 N. W. Rep. 448, there was no evidence in a case of burglary that William Drake was the owner of the dwelling house as charged in the information, and the judgment was reversed for that reason. Chief Justice Cole said in the opinion that "there was no variance, strictly speaking, but the proof did not go far enough to show that the dwelling was that of William Drake." So here the proof did not go far enough to show that the money was received into the bank on deposit "for safe-keeping," or as a special deposit. There was a general deposit proved, and no other. There was an utter failure to prove the offense as charged in the information. The kind and character of the deposit as alleged in the information as for safe-keeping or as a special deposit must be proved as laid. These words were material as words of necessary description of the offense. As the ownership of the dwelling in Jackson v. State, *supra*, or as the sale of one glass of whisky, instead of one glass of beer, in State v. Quinlan (Minn.), 41 N. W. Rep. 299; or as issuing fraudulent warehouse receipts to the "Merchants' Loan and Trust Company," instead of the "Merchants' Savings Loan and Trust Company," in Sykes v. People, 132 Ill. 32, 23 N. E. Rep. 391; or as receiving money for account of "G. H. P.," instead of "G. H. P. & Co.," in Polkinghorne v. State (Miss.), 7 South. Rep. 347; or as selling "spirituous and intoxicating" liquors, they must be proved to be both spirituous and intoxicating, if so charged, in Com. v. Grey, 2 Gray, 501; 1 Bish. Cr. Proc. § 336; or as the ownership of the property burned, in the crime of arson, in McGary v. People, 45 N. Y. 153; and as in many other cases cited in the brief of the counsel of the plaintiff in error. This is such a self-evident proposition, it would have been sufficient to cite only Prehm v. State (Neb.), 36 N. W. Rep. 295, where the court said: "It is well settled that the descriptive averments in an indictment must be proved as alleged, in order to warrant a conviction. In support of this no authorities need be cited." It is held in that case that the proof of drafts, payable in goods, did support the allegation of falsely representing worthless drafts to be good and valuable.

PARTY WALL — RIGHTS OF ADJOINING OWNER—INCREASE OF HEIGHT.—An adjoining owner of a party wall has a right to increase its height; and where he contracts with an independent contractor to have this done in a lawful, proper and usual way, so that the work does not become in itself dangerous or extraordinary and does not subject the existing wall to overweight, he is not liable for the damages incident to the falling of the wall through some accident. Those propositions of law are laid down by the Court of Appeals of New York in Negus v. Becker, 38 N. E. Rep. 290. The following is from the opinion of the court:

The direction of a verdict for the plaintiff proceeded upon the theory that in undertaking to have the party wall carried up, in order to provide for the third story of their building, the defendants assumed an unqualified liability to the plaintiff for an occurrence, in the course of construction, resulting in injury to him. There is no charge in the complaint, and there was no evidence to show, that the erection of this wall was something intrinsically dangerous, and therefore a matter which imposed upon the defendants a responsibility, in case of resulting damage to their neighbor, from which they could not escape by any plea. The gravman of the complaint seems to be in the proposition that, because the defendants extended the party wall to the full depth of the boundary line, and carried it higher up, without the plaintiff's knowledge or consent, they did so at their peril, and became absolutely liable, or insurers, for all possible injurious rerults. In the opinion of the general term, upon the authority of Brooks v. Curtis, 50 N. Y. 639, and of Schile v. Brokahus, 80 N. Y. 619, it was held that it was unnecessary for the claim in the complaint to be based upon negligence; that, while the defendants had the right to use the wall as they did, they "insured the safety of the operation." "The party making the change," it was said, "is absolutely responsible for any damage which it occasions." We cannot agree with the court below in their view of the question, or that it is controlled by the authorities cited. Schile v. Brokhahus was an action for trespass in tearing down a portion of a partition wall; and it was tried upon the theory, as Chief Judge Church stated, "that the defendant, in disregard of the plaintiff's rights, commenced to tear down the old wall, claiming that it stood entirely upon his own land, and intending to erect a new wall for himself, without giving the plaintiff's property any benefit from it as a party wall; and that this was a trespass which caused the injury complained of." It was upon that theory that the jury found for the plaintiff, and the judgment was affirmed. Brooks v. Curtis was an action to compel the defendants to remove certain alleged encroachments, which consisted in making additions to the party wall. The plaintiff was held not to be entitled to relief, so far as the carrying up of the wall was concerned; but because, as the roof of the new building was constructed, it caused water, snow, and ice to fall upon the plaintiff's building, the defendants were held to have been properly restrained from maintaining it in that condition. Judge Rapallo made the following observation: "We think that the right of either of the adjacent owners to increase the height of a party wall, when it can be done without injury to the adjoining building, and the wall is clearly of sufficient strength to safely bear the addition, is necessarily included in the easement. The party making the addition does it at his peril; and if injury results, he is liable for all damages. He must insure the safety of the operation; but when safe it should be allowed. The wall is devoted to the purpose of being used for the common benefit of both tenants." The argument is that this language formulated the rule of liability for this case. The respondent, in his brief, says: "Under the principle there enunciated, the appellants had a legal right to increase the height of the wall. But this was a conditional, and not an absolute, right. The condition is that he insures the safety of the operation." We think the opinion in Brooks v. Curtis has been quite misapprehended in deducing from it any such rule of absolute liability, and that the language quoted, which is relied upon as furnishing the rule, should receive no such reading. In connection with the facts, it was appropriate. The "safety" there alluded to, which the building party insures, has refer-

ence to the strength of the wall to support the addition, or to the manner of its construction, as furnishing thereafter a possible source of danger or of nuisance to the adjoining owner. It did not mean safety against uncontrollable accidents or the results of some third party's negligence. This is clear from the reading of the balance of the opinion, as well as from a fair consideration of the question.

A party wall is for the mutual convenience and benefit of adjoining property owners, and the only restriction upon its use by either is that that use shall not be detrimental to the other. In this case the wall was the joint property of the parties. It was built for the purposes of a building of three stories in height, and, if the plaintiff did not avail himself of his right to erect a building of such a size, that fact was no obstacle to the defendants building it up, as it had been intended and agreed upon, in order that it might furnish a wall for their own three-story building. They were within the exercise of their legal right in what they did, and it is impossible to see that they assumed any risk in building a wall of the height originally contemplated, so long as they contracted for one of suitable strength, and so adapted as to serve, when built, the purposes of the defendant's new building, without detriment to the enjoyment by the plaintiff of his premises. The plaintiff's agreement bound him to construct a party wall foundation sufficient for the purposes of a three-story building, and he may not complain if the wall is carried up to subserve such a purpose. Had the defendant exceeded the height of three stories, it can then be seen that they might have become insurers of the safety of the wall, for they would have been without the protection of the party-wall agreement, and they would have been undertaking to do a thing which would possibly, if not probably, be hazardous, in view of the limitation as to strength under which the foundation wall was built.

The peculiarity of this case is that there is no question of negligence involved, and for his recovery the plaintiff insists upon the application of the principle that, where one of two persons has sustained damage, the one that has caused it or contributed to it must make it good; or that where an act is done for the benefit of one party, which damages another, the person to be benefited by the act insures the safety of the work, and becomes answerable as an insurer. These principles are inapplicable, and the difficulty with the position is that there is no restriction upon the lawful use by a party of his property, if he proceeds with due care in improving it. The defendants had the conceded right to carry up this wall, of which they were joint owners, for the use of their building, and they provided for its erection in a lawful, proper, and usual way. If there was negligence in the construction of the wall, and its fall could be attributed in any wise to some negligent act of commission or of omission in the process of construction, it is very clear that the party liable for the resulting damage would be the contractor. By the contract between him and these defendants, he undertook to construct the wall. It was not a matter which the defendants were competent to engage in, and in contracting with Robinson they placed themselves in a position which exonerated them from any responsibility for a negligent performance of the work. The performance of the work contracted for was neither dangerous nor extraordinary in itself, and hence the rule would apply that, for an injury resulting to another by reason of a negligent performance, the remedy would be solely against the contractor. The owners were innocent of any act contributing to the injury. We have lately discussed this doctrine in Engel v. Eureka Club, 137 N. Y. 100, 32 N. E. Rep. 1052; but as it has been already observed, no negligence is charged, and the case was left to stand upon the sole proposition that, however innocent the defendants of causing the occurrence, and however lawful their undertaking to build up the party wall, they must nevertheless be responsible for what happened. This cannot be, and is not, correct doctrine. If the fall of the wall was through some negligence in its construction, or in securing it, the liability was the contractor's and not the property owners'. If there was no such negligence, and the fall was occasioned through some accident—as, for instance, by the extraordinary force of the storm, which is mentioned—the defendants were not responsible. If, in the lawful use of one's property, injury is occasioned to an adjacent owner, which the exercise of due care could not have prevented, there is no remedy. An illustration of this rule is presented by cases of the excavation of land which deprives adjoining premises of lateral support (Lasala v. Holbrook, 4 Paige, 170); or, more recently, by the case of Booth v. Railroad Co., 140 N. Y. 267, 35 N. E. Rep. 592, where the damage was caused by blasting. Here there was damage, admittedly; but there was no wrong. As the complaint was framed, and the case was tried, the fall of the wall was not laid to the fault of the defendants or of their contractor, and upon such a case plaintiff should have been nonsuited.

ADVERSE POSSESSION—WHAT CONSTITUTES.—The Supreme Court of Arkansas hold in Wilson v. Hunter, 28 S. E. Rep. 419, that where the owner of a lot builds over the line on the adjoining lot through mistake as to the boundary, open, continuous and exclusive possession for the statutory period by the owner of such building and his grantee, with intention to hold adversely, constitutes adverse possession. The court said in part:

Where land belonging to one of two coterminous proprietors is inclosed or built upon by the other, the intention with which the possession was taken and held is important in determining what rights, if any, were thereby acquired. No right or title can be gained against the owner by mere possession. To bar an action for the recovery of the land so held, the possession must be actual, open, continuous, hostile, exclusive, and be accompanied by an intent to hold adversely and "in derogation of," and not in "conformity with," the rights of the true owner, and must continue for the full period prescribed by the statute of limitations. There must be an intention to claim title. If one of two adjacent owners inclose or build upon his neighbor's land "through mere inadvertence, or ignorance of the location of the real line, or for purposes of convenience, and with no intention to claim such extended area," as said by the court in Alexander v. Wheeler, 69 Ala. 340, "but intending to claim adversely only to the real or true boundary line, wherever it might be, such possession would not be adverse or hostile to the true owner." But it would be if he inclosed, or built upon and held, the land under the belief and claim that it was his own, even though the claim of title was the result of a mistake as to the boundaries of his own land. "In such a case," as said in Alexander v. Wheeler, *supra*, "there is a clear intention to claim" the land occupied or inclosed, "and

the possession does not originate in an admitted possibility of mistake." Brown v. Cockerell, 33 Ala. 45; Alexander v. Wheeler, 69 Ala. 340; Abbott v. Abbott, 51 Me. 584; Hitchings v. Morrison, 72 Me. 333; Ricker v. Hibbard, 73 Me. 105; Ayres v. Reidel (Wis.), 54 N. W. Rep. 588; Hamilton v. West, 63 Mo. 93; Walbrunn v. Ballen, 68 Mo. 164; Bunce v. Bidwell, 43 Mich. 546, 5 N. W. Rep. 1023. In the case at bar there was evidence adduced at the trial which tended to show an intention to hold the land in controversy adversely, and that the possession of the appellee was in other respects sufficient to bar the appellant from recovering the land.

PARTNERSHIP—FRAUDULENT DISSOLUTION—ATTACHMENT.—Whether insolvent partners may dissolve their partnership and divide the assets so as to make them exempt from execution, as against a firm creditor, without incurring the charge of fraud (subject to immediate attachment proceedings) was discussed by the Supreme Court of Nebraska in Cox v. Peoria Mfg. Co., 60 N. W. Rep. 936. The court held that such a division was fraudulent in fact and subjected the property to attachment on the part of the firm creditors. The following is from the opinion of the court:

It appears that the firm of Cox & Cornell was composed of Joseph M. Cox and George A. Cornell, and that the said firm continued in business up to about the 20th day of February, 1891, when by mutual consent the partnership was dissolved, and the property of the firm, consisting chiefly of wagons and buggies, and for which the note sued on was given in part payment, was divided between the partners, with the intention and for the sole purpose of enabling each, if possible, to claim the property as transferred to him as exempt under the exemption laws of the State and thereby defeat the collection of plaintiff's claim. At the time of the division of the property as aforesaid, the firm, and each member thereof, was insolvent. Subsequently, judgments were recovered against Cox & Cornell by two of their creditors, upon one of which an execution was issued and levied upon certain property which had been divided as aforesaid between the members of the firm, and the said Joseph M. Cox and George H. Cornell each filed an affidavit in the court from which the execution issued claiming the property so levied upon as exempt. There is no evidence, that the property was divided between the partners in proportion to the share or interest of each in the firm assets. The question for consideration is whether there was a disposition of the property of the partnership with fraudulent intent to cheat and defraud the creditors of Cox & Cornell? Stated differently, have partners the right to divide between themselves the firm assets, where such division is made with the avowed purpose of preventing, hindering, or delaying creditors from collecting their claims from the property of the partnership. We think the answer must be in the negative.

Partnership effects are liable for the payment of the debts against the firm. The interest of each partner is his moiety or share of the assets remaining after the partnership debts are settled. In other words, each member of the firm holds his interest in the property of the partnership subject to a trust for the firm creditors. Neither partner, nor all of them together, can lawfully, on the dissolution of the firm, transfer or otherwise dispose of the assets, where the purpose in so doing is to place the same beyond the reach of the partnership creditors, or to hinder or delay them in the collection of their debts. In Roop v. Herron, 15 Neb. 73, 17 N. W. Rep. 353, a case similar in its controlling features to the one before us, the court says: "A partnership is a distinct entity, having its own property, debts, and credits. For the purposes for which it was created, it is a person, and as such it is recognized by law. And the credit being given to the firm,—in effect, to the partners jointly,—it would seem but justice that the goods so purchased should not be diverted to the use of an individual partner, when such divisions will have the effect to defraud the creditors of the firm. It may be said, the goods having been sold to the firm, the creditors thereby surrendered all control over them, and trusted alone to the solvency of the debtor firm for payment; that, the delivery being complete without conditions, the debtor firm could make what disposition of the property it saw fit. In a sale to an individual upon credit, in addition to the agreement to pay the debt, there is an implied agreement that the debtor's property shall, if necessary, be applied for that purpose."

Now, if the debtor attempts to divert his property from this purpose,—to place it beyond the reach of his creditors,—the law at once authorizes its seizure by attachment to prevent the creditor from being defrauded. So, with property held by a firm, there is an implied agreement that all its assets shall, if necessary, be applied to the payment of the firm debts, and any division of such assets of an insolvent firm is a fraud upon its creditors. In other words, the partnership property is a trust fund to the extent of the partnership liabilities, and to be applied in satisfaction of the same. Egberts v. Wood, 3 Paige, 517; Innes v. Lansing, 7 Paige, 583; Whitewright v. Stimpson, 2 Barb. 379. This being so, can the members of an insolvent firm by simply assigning their interest in the property, defeat this trust and change the character of the property from partnership to that of individual? If so, it affords an easy mode of defeating partnership creditors. The creditor might say, "We gave the credit because the firm seemed to possess sufficient assets to pay its debts, and if in good faith they are applied to that purpose they are sufficient." The right of the members of a firm who as a firm have induced others to give them credit, to change the firm property to that of an individual member of the firm, without the consent of the creditors, is very doubtful.

We are satisfied that the dividing of the asset, in the case at bar, in the severalty between the partners, for the purpose intended, amounted to such a fraudulent disposition of the property, within the meaning of the statute, as to lay the foundation for the suing out the attachment. No one will dispute that, inasmuch as the statute of exemptions is lawful, it is not a fraud for a debtor to avail himself of its provisions by disposing of his property which is liable to exemption, for the purpose of investing the proceeds arising therefrom in property which is exempt under the statute. But this is not the case before us, which must be plain to every one, since there has been no converting of the assets of the firm into other property. On the other hand, all the effects have been transferred to the individual partners, with the view of enabling each other to claim and hold as exempt

the part which came into his hands; and this was done, confessedly, for the sole purpose ot cheating and defrauding the firm creditors. We are of the opinion, therefore, that the charge of fraud set up in the attachment affidavit is fully sustained by the evidence, and that the court did not err in refusing to dissolve the attachment.

THE CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL.

Two recent cases, one in Maine, the other in California, are of interest in that they draw attention to that constitutional right to a public trial, which there has been a tendency of late years among a very estimable class of people to attempt to abridge. The details of criminal cases are not always very clean, and it frequently happens that the investigation in a court of law of a sensational case draws to the court-room a crowd of persons whose only interest there is founded on a morbid curiosity. The good people who would prevent the circulation of some of the classic writers of literature—Shakespeare, Fielding Rabelais, and the dramatists of the Restoration, for example—because every line may not be proper reading for the very young have also demanded that all trials for rape, seduction, adultery and the like, shall be held *in camera*, and it appears that there are judges on the bench who are influenced by this clamor.

Thus, in Williamson v. Lucy,[1] a trial judge in a prosecution for adultery had ordered every one to leave the court room except the parties and their witnesses, and had, under this order, ejected a number of prominent citizens, including several members of the bar. In the Supreme Court, however, this action was spoken of as follows: "It is an undeniable proposition to start with in this discussion, that courts of justice should be open to the public. That is the rule. History brings to us too vivid pictures of the oppressions endured by our English ancestors at the hands of arbitrary courts ever to satisfy the people of this country with courts whose doors are closed against them. They instinctively believe that it is their right to witness judicial trials and proceedings in the courts. It is true that courts have discretionary powers to be exercised in such a matter, but not an unlimited discretion. The almost boundless authority exercised by the court of star chamber in England was the seed of its own destruction, and was its historical infamy. Its lessons are not lost on the courts of to-day. We never knew of any court of general jurisdiction in this State conducting a strictly private criminal trial. * * * Public trials have a tendency to prevent waste of the public money. The persons ejected from the court room were among the principal citizens of the county, comprising leading members of the bar, county commissioners, clerk of the courts, county treasurer, and others of the highest respectability in that community. It is idle to charge against such a body of men that they crowded the court room for any unjustifiable purpose. Much more decorous would it be to conceive that they distrusted the propriety of the prosecutions, and were present because they were interested in the orderly and economical administration of justice. Apparently some of them were present because they were acquaintances and friends of the accused. They were gentlemen capable of being good judges of their own conduct."

In the California case, People v. Hartman,[2] on a trial for rape, the court made an order excluding from the court room during the trial of the case all persons except the officers of the court and the defendant. In reversing the case, the court say: "This was a novel procedure, and has no justification in the law of modern times. We know of no case, decided in this country supporting the course of procedure here pursued. It is in direct violation of that provision of the constitution which says that a party accused of crime has a right to a public trial. The fact that the officers of the court were allowed to be present in no way made the trial public. For the purposes contemplated by the provision of the constitution, the presence of the officers of the court—men whom, it is safe to say, were under the influence of the court—made the trial no more public than if they too had been excluded. While a right to the public trial contemplated by the constitution does not require of courts unreasonable and impossible things, as that all persons have an absolute right to be present and witness the court's proceedings, regardless of the con-

[1] 29 Atl. Rep. 943 (Me.).

[2] 37 Pac. Rep. 154 (Cal.).

veniences of the court, and the due and orderly conduct of the trial, yet this provision must have a fair and reasonable construction in the interest of the person accused. * * * The trial should be 'public,' in the ordinary common sense acceptation of the term. The doors of the court room are expected to be kept open, the public are entitled to be admitted, and the trial is to be public in all respects, as we have before suggested, with due regard to the size of the court room, the conveniences of the court, the right to exclude objectionable characters and youth of tender years, and to do other things which may facilitate the proper conduct of the trial."

In People v. Murray,[3] a trial for murder, the court had ordered the officers to exclude from the court room all but respectable citizens; the main doors were closed and the only entrance was through the clerk's office, the result being that at no time during the trial was the space assigned for spectators half filled. The Supreme Court of Michigan granted a new trial, Champlin, C. J., saying: "It is not necessary to review the history of the administration of the criminal law in England, or to call attention to its abuses in its administration to show the reason why these important provisions ('in every criminal prosecution the accused shall have the right of a speedy and public trial,' Const. Mich., art. 6, § 28) were inserted in our constitution, which, in this respect, is but a reflection of similar provisions contained in all of the constitutions of the American States and of the United States. They are each and all enacted for the protection of rights of persons accused of criminal offenses, and each is a constant memorial of the great abuses practiced in England at one time and another prior to the American Revolution, in conducting criminal prosecutions. * * * In this case it is apparent that the constitutional rights of Murray were violated in the order of the court to the police officer stationed at the door of the court room, 'that he should stand at the door, and see that the room is not overcrowded, but that all respectable citizens be admitted and have an opportunity to get in whenever they shall apply.' It is shown beyond question, that during the whole trial the court room was not overcrowed, nor were the seats provided for spectators occupied to any great extent. This officer was under the control of the court, and when the court was informed that he was excluding citizens and tax-payers, he refused to take any notice of the complaint, and left the officer to exercise his discretion as to what respectable citizens he should admit. Is respectability of the citizen who desires to witness a trial to be made a test of the right of access to a public trial, and is that test to be left to the knowledge or discretion of a police officer? Must a citizen who wishes to witness a trial of a person accused, whether he be a friend, an acquaintance or a stranger to the accused, present to the police officer stationed at the door of the temple of justice a certificate of his respectability? If so, by whom shall it be certified? By the mayor, the chief of police or police commissioners, or by his pastor or clergyman? Neither the constitution nor the law requires any such preposterous condition to the admission of a citizen to attend and witness a trial, either civil or criminal."

In the earlier California cases of People v. Swafford,[4] and People v. Kerrigan,[5] the public had been excluded from the court room, and it was contended in the Supreme Court that the prisoner had not had the "public trial" to which he had a constitutional right. But in both cases the action of the court was approved, on the ground that no injury was shown to have resulted to the accused, from the exclusion of the public. These cases, since the decision in People v. Hartman, can hardly be said to be the law. The only other American authorities which can be cited as sustaining the validity of a trial *in camera*, are the cases of Brooks, Copp and Grimmett; but it will be found on examination, that in the first two there was no intention on the part of the court to exclude the public from the court room. In State v. Brooks,[6] a trial for murder, during the first two days while the jury was being impanelled, two men stationed at the door of the court room refused to admit anyone except jurors, witnesses, officers of the court or those having business there. The matter being brought to the attention of the trial judge, he stated that it had not been ordered by him, and he announced that anyone who wished to come into the

[3] 50 N. W. Rep.

[4] 65 Cal. 223.

[5] 73 Cal. 222.

[6] 92 Mo. 573.

court room could do so, and that all persons would be admitted until all the seats were filled. The Supreme Court held that there had been no denial of a public trial. "Had the court," said Norton, C. J., "either refused to make such an order, or if after making it, had refused a request on the part of the defendant, that the jurors who had been examined while the men were stationed at the door should be re-examined, this might have afforded some ground for the complaint made; but no such request was made." In State v. Copp,[7] a person was removed from a court room because he offensively insisted in keeping a seat so near to the magistrate as to personally embarrass him in the performance of his duties. And the court there remarks: "But the law does not authorize any court to act arbitrarily, and unreasonably exclude persons, but the right to have the courts open is the right of the people, and not of the individual."

In Grimmett v. State,[8] during the examination of a girl fourteen years old, it appeared to the trial judge that on account of the vulgar details of the case, the youth and sex of the witness, and the fact that she was the daughter of the prisoner, it would be impossible for her to give her evidence without embarrassment in the crowded and expectant court room, so that as the judge in the bill of exceptions puts it, "when the witness burst into tears and said 'they (the people) had no business here,' the court agreed with her, and directed that the court room be cleared, which was done, only the attorneys, jurors and officers of the court remaining." The action of the court was sustained on appeal on the ground that the prisoner had not shown that any injury was done to him, and because the public were excluded during the examination of but one witness.

People v. Hartman overrules the cases of Swafford and Kerrigan, more especially the intimation in those cases that, conceding the prisoner to have been deprived of a public trial, the burden is on him to show that he has been injured thereby. "These intimations," says the Supreme Court, "cannot be indorsed. A defendant charged with crime is entitled to certain rights under the constitution; and, when he has been deprived of any one of them, he has not had that fair and impartial trial to which he is entitled, however bad and degraded." Unfortunately it is without jurisdiction to overrule the same view of a prisoner's rights which is entertained by the judge who delivered the opinion of the Texas court in the Grimmett case, where he says: "It is not shown that any person who could have been of any service to the defendant in his trial was excluded, or that any injury whatever was done him by the order and acts complained of by defendant." The Supreme Court of Michigan, in the Murray case, expresses in strong language its dissent from this proposition. "Courts," said the Chief Justice, "have no dispensing power. The judge who presided at the trial of this case was as much bound by this provision of law as the humblest citizen. The trial may have been an impartial one; the respondent may have been justly convicted; but it still remains that it was accomplished in violation of his constitutional and statutory right to a public trial. Edmund Burke never expressed a more important truth, when speaking respecting the suspension of *habeas corpus* at the time of the American Revolution, when he said: 'It is the obnoxious and suspected who want the protection of the law.' Courts of final resort cannot consider the question whether the respondent was justly convicted or not in passing upon questions of law presented for their consideration. It is for the protection of all persons accused of crime—the innocently accused that they may not become the victim of an unjust prosecution, as well as the guilty; that they may be awarded a fair trial—that one rule must be observed and applied to all. * * * I cannot accede to the correctness of the proposition intimated in that case that, if a public trial has not been accorded to the accused, the burden is upon him to show that actual injury has been suffered by a deprivation of his constitutional right. On the contrary, when he shows that his constitutional right has been violated, the law conclusively presumes that he has suffered an actual injury. I go further, and say that the whole body-politic suffers an actual injury when a constitutional safeguard erected to protect the rights of citizens has been violated in the person of the humblest or meanest citizen of the State. The constitution does not stop to inquire of what the person

[7] 15 N. H. 212.
[8] 22 Tex. (App.) 36.

has been accused or what crime he has perpetrated; but it accords to all, without question, a fair, impartial and public trial."

The requirement of a "public trial" is, that the public may see that the prisoner is fairly dealt with and not unjustly condemned; that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility, and to the importance of their functions, and because it may happen—as it has often happened—that there may be among the spectators, some one drawn there simply by curiosity, who, in a critical moment, may be able to give convincing testimony in favor of the prisoner. Of course, as said by Mr. Bishop, "publicity does not absolutely forbid all temporary shutting of doors or render incompetent a witness who cannot be heard by the largest audience, or require a court room of dimensions adequate to the accommodation of all desirous of attending a notorious trial, or vocal organs in counsel or judge capable of reaching all."[9] Judge Cooley[10] is of opinion that in certain cases it might be proper to exclude a certain portion of the community from attending trials which would tend to degrade public morals, or would shock public decency, in which he says that at least the young should be excluded, and there can be no objection to this, so long as citizens of the State who have arrived at the years of discretion and manhood are permitted to freely enter.[11] He intimates, also, that the constitutional requirement is fulfilled, if without partiality or favoritism, a reasonable proportion of the public is permitted to attend, notwithstanding that those persons whose presence would be of no service to the accused, and who would be drawn thither by a purient curiosity, are excluded altogether. But who is to decide as to which of the audience are there to see that the prisoner is given all his rights, and which are there from mere curiosity, and who can say that any particular stranger in the public seats will not be, before the trial ends, of some service to the accused. "The law makes no such test, but allows all citizens freely to attend any trial."

An eminent writer has recently protested against the young girl being adopted as the controlling factor in fixing the standard of literature. A lawyer may, perhaps, be permitted to enter his protest against a court accepting (as in the Texas case) the law of a great constitutional provision from the mouth of a child of fourteen.

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[9] 1 Bish. Cr. Pr. 959.
[10] Cooley, Const. Law, 312.
[11] See Champlin, C. J., in Murray's Case, *supra*.

BREACH OF MARRIAGE PROMISE—CONCEALMENT OF FACTS.

VAN HOUTEN V. MORSE.

Supreme Judicial Court of Massachusetts, Nov. 30, 1894.

1. In an action for breach of promise of marriage, there was evidence that plaintiff represented to the defendant before the engagement that she had been married, and had obtained a divorce from her husband but, failed to state that her husband procured a divorce from her on a cross bill which charged her with being a woman of violent temper, and with cruelty. Held, that the divorce and charges in the cross bill were material facts, and that, if plaintiff willfully suppressed them, she was guilty of fraudulent concealment.

2. Instructions that, if the engagement was brought about by false representations and concealment of matters inquired about which defendant had a right to know, the contract could not be enforced, are improper for restricting the rule to those facts inquired about only.

3. If plaintiff undertook to state material facts relating to her history, she was bound not only to state truly the facts narrated, but was bound not to suppress facts necessary to a correct understanding thereof; and, if she willfully concealed such facts, she was guilty of fraudulent concealment.

MORTON, J. The defense principally relied on in this case is that the promise, which the jury have found was made, was induced by fraudulent conduct and representations and concealments on the part of the plaintiff with reference to various matters relating to her past life, to her parentage and family, and to her position and circumstances. The defendant contends that the instructions of the court as to what constituted fraudulent concealment were not sufficient, and that certain requests which he made should have been given.

The jury were correctly instructed that it was not the duty of a party before making or accepting an offer of marriage, to communicate all the previous circumstances of his or her life; and that the parties would be bound, if they became engaged without making any investigation, and without receiving any assurances or representations which led to the engagement, even though matters were discovered subsequently which, if known at the time, would have prevented the engagement, unless they were such as gave a right to the other party to terminate the contract upon their discovery. Whether the only matters which would give the defendant such a right were those relating to the chasity of the plaintiff we have no need now to consider. No question was made by

him as to the plaintiff's chastity; and the fact, if it was a fact, that the plaintiff had some negro blood in her veins, or that her motives were mercenary, or that there was a want of affection on her part, or that there was an incompatibility, resulting from disparity of age, difference in character and disposition, and other causes, which, apart from fraud, were the things relied on by the defendant, would not justify him as matter of law in breaking the contract. Coolidge v. Neat, 129 Mass. 146; Reynolds v. Reynolds, 3 Allen, 605; Gring v. Lerch, 112 Pa. St. 244, 3 Atl. Rep. 841; Berry v. Bakeman, 44 Me. 164; Leeds v. Cook, 4 Esp. 256; Baker v. Cartright, 10 C. B. (N. S.) 124; Beachey v. Brown, El. Bl. & El. 796; Young v. Murphy, 3 Bing. (N. C.) 64; Bench v. Merrick, 1 Car. & K. 463. See, also, 2 Am. & Eng. Enc. Law, for collection of cases. But, in respect to what would, in view of the circumstances of this case, be such concealment on the part of the plaintiff as to constitute fraud, we think that the instructions hardly went far enough, or, at least, that it is possible that the jury may not have understood them as they were, perhaps, intended by the court to be understood. The jury were instructed that if the engagement was brought about, in whole or in part, by false representations, by concealments upon matters which were inquired about, or which the party had by universal consent the right to know, that the contract could not be enforced. And later they were told that the defendant was not bound if the contract was procured by deception or by fraud, or by concealment which was fraud, but that there was no fraudulent concealment by simply not communicating information; that a promise would be valid, though made in complete ignorance of the antecedents of the parties, but that there was a different doctrine where matters were inquired about; and that, if either party made inquiries of the other with reference to family, position, or circumstances in the life or experience of the other, then if willful, false statements were made with reference to any of those things which might fairly be considered as entering into the judgment of either party as to whether that party would or would not enter into a contract of marriage, then there would be a false representation. "That is," the court continued, "a statement which a party knows is false, or makes as true of his or her own knowledge, when it is in fact untrue, and without knowing that it is true, or if there is concealment of any such particular which is inquired about, those circumstances will be sufficient to make void a contract entered into in consequence of and relying upon them, unless they are of such a nature that no man would be justified in the exercise of reasonable care in relying upon them." These instructions might, and probably would, lead the jury to infer that concealment on the part of the plaintiff would not constitute fraud, except as to matters that were inquired about by the defendant. But we think that if the plaintiff undertook, without inquiry from the defendant, to state facts relating to any circumstances in her history of life, or to her parentage or family, or to her former or present position, which were material, she was bound not only to state truly the facts which she narrated, but she was also bound not to suppress or conceal any facts which were necessary to a correct understanding on the part of the defendant of the facts which she stated; and if she wilfully concealed and suppressed such facts, and thereby lead the defendant to believe that the matters to which such statements related were different from what they actually were, she would be guilty of a fraudulent concealment. Kidney v. Stoddard, 7 Metc. (Mass.) 252; Short v. Currier, 153 Mass. 182, 26 N. E. Rep. 444; Burns v. Dockray, 156 Mass. 135, 137, 30 N. E. Rep. 551, Prentiss v. Russ, 16 Me. 30; Atwood v. Chapman, 68 Me. 38, 40, 41; Potts v. Chapin, 133 Mass. 276; Clark v. Baird, 9 N. Y. 183; Brown v. Montgomery, 20 N. Y. 287; Devoe v. Brandt, 53 N. Y. 462; Stevens v. Adamson, 2 Starkie, 422; Hill v. Gray, 1 Starkie, 434; Arkwright v. Newbold, 17 Ch. Div. 301, 317, 318; Aortson v. Ridgway, 18 Ill. 23; Add. Torts, § 1205.

Mere silence on the part of the plaintiff, without inquiry by the defendant, though resulting in the concealment of matters which would have prevented the engagement if known, would not constitute fraud on her part. Potts v. Chapin, *supra*. But a partial and fragmentary disclosure, accompanied by the willful concealment of material and qualifying facts, would be as much of a fraud as actual misrepresentation, and would be, in effect, misrepresentation. Arkwright v. Newbold, 17 Ch. Div. 317, 318.

There was evidence that the plaintiff represented to the defendant before the engagement that she had been previously married, and had lived with her husband in Spokane and other places five or six years, and that, a few weeks before she left Spokane for Boston, she had obtained a divorce from him on account of his bad conduct and cruelty to her. So far as it appears from the exceptions, that was all that the plaintiff told the defendant about the divorce before the engagement. But there was testimony tending to show that, at the same time that she procured a divorce from her husband, he procured one from her; and that the cross bill filed by him in answer to her complaint, and on which his divorce was granted, charged her with being a woman of violent and ungovernable temper, and of jealous, revengeful, and vicious disposition, and with having, within two weeks after their marriage, commenced a systematic course of violent, abusive, and cruel conduct towards him, which finally broke down his health and compelled him to leave her. It also charged her with assaulting him with a carving knife, and using profane epithets in regard to himself, his relatives and friends, and alleged numerous specific acts of violence and passion. We think that the divorce

which her husband obtained from the plaintiff and the charges contained in the cross bill were material facts, and that if the plaintiff knew them when she told the defendant that she had obtained a divorce from her husband for his cruelty, and willfully suppressed them, she was guilty of a fraudulent concealment and misrepresentation. To say that she had obtained a divorce from her husband for his cruelty, and omit all reference to his divorce, and the grounds on which he obtained it, was to state the matter in such a way as to convey a different impression from that which would have been conveyed if all the facts had been stated, and was misleading. Though it does not appear very clearly from the exceptions whether she did or did not know of the divorce which her husband had obtained from her, and of the charges which he made in his cross bill, it is fairly to be inferred that she was not ignorant either of the divorce or of the charges. There was testimony tending to show that, when the defendant informed her of them, she did not express ignorance of them, but said that they were not true, and the trial seems to have proceeded on the assumption that she knew of them. Moreover, though possible, it is hardly probable, that she was unacquainted with the fact that he had obtained a divorce, or with the grounds on which he got it. So with regard to her parentage and family. She was under no obligation to tell the defendant about them in the absence of inquiry by him. But if she voluntarily undertook to make any statements concerning them, she was bound, not only to state truly what she told, but also not to suppress or conceal facts which would materially qualify those which she stated. If, for instance, as the evidence tended to show, she told the defendant that her father and mother were both of the best white families in Charleston, S. C.; that her father was a distinguished lawyer; that her mother was equally high bred; and that, after his death, her mother married a man by the name of Smith, with which her mother's folks were dissatisfied; and that on that account the family moved to California,—but if she suppressed the fact that Smith was a colored barber and an octoroon and her reputed father, and that her mother had negro blood in her veins, and was about one-eighth negro, the impression as to the standing of herself and family, and the credibility of her statement respecting her parentage, would or might be quite different from that which would be likely to be made if she had told the whole truth. These facts, if they were facts, were necessary to a correct understanding of the real state of the circumstances of her family and of her previous history, and were or might be found to be material; and a willful suppression of them on her part, in view of what there was evidence that she told, would constitute, or might be found to constitute, a fraud upon the defendant. Wharton v. Lewis, 1 Car. & P. 529.

The defendant's requests did not state the law with entire correctness, and did not direct the attention of the court particularly to the effect of a suppression by the plaintiff of facts which would materially modify those which she voluntarily told the defendant respecting the divorce and her parentage and family. They did, however, call for instructions as to what would constitute fraudulent concealment in respect to those matters, and it is evident from the charge that the court understood them to do so. In giving its instructions, the court stated the law in reference to things that were inquired about in such a manner that the jury might infer that as to matters not inquired about the suppression of material facts would not constitute fraudulent concealment. As to an important phase of the case this was erroneous, and the jury may have been misled by it; and though the defendant did not call the attention of the court to that aspect of the case any more than to what would constitute fraudulent concealment, in case inquiry was made, we think that the whole matter was fairly within the scope of his requests, and that he well might assume that the instructions as given stated in the opinion of the court the rules of law properly applicable to it. Cork v. Blossom (Mass. Nov., 1894), 38 N. E. Rep. 495. The court are not unanimous in their view of the questions presented by the bill of exceptions, or in their construction of the judge's charge, but there is no difference of opinion with regard to the principles of law to be applied to the case.

Among other rulings which the defendant requested was the following: "If mutual promises to marry were made, and the defendant was influenced to do so by the fraud or deception of the plaintiff as to her life, lineage, character, traits of character, or property, or former condition in life, his promise does not bind him." In reference to this the court said: "That I should give with the qualification which I have made generally upon the subject. I think there is nothing objectionable in that." We understand that by "the qualification" referred to was meant what the court had previously saidin regard to its not being the duty of a party, before making or accepting an offer of marriage, to communicate all the previous circumstances of his or her life, and that a party would not have the right to terminate a contract of marriage on the ground of fraud upon subsequently discovering matters which, if seasonably known, might have prevented the engagement, though not sufficient to justify a party in breaking it off. As thus qualified, the instruction was correct, and the defendant had no proper ground of exception. But we do not think that it meets the objections of the defendant to the sufficiency of the charge in regard to what constituted fraudulent concealment.

The exceptions state that "the jury were instructed at length upon the law applicable to actions for breach of promise of marriage, to which instruction no objection was made except

as appears by the bill of exceptions." We do not understand from this that any instructions on the matter of fraud, which were deemed material upon any of the questions raised by the defendant, are omitted from the bill of exceptions, but we infer that all of the instructions pertinent to the requests and contentions of the defendant on that subject are included in the exceptions. We discover no error in the instructions or rulings or refusals to rule, or in the admission of evidence, or in the conduct of the trial, except as above stated. We cannot say that the photographs did not tend to support the statement of the plaintiff in regard to her family, or that they were improperly admitted. Whether they were sufficiently verified was for the court, and it is not a matter of exception. Blair v. Pelham, 118 Mass. 420; Com. v. Morgan, 159 Mass. 375, 34 N. E. Rep. 458. Exceptions sustained.

NOTE.—*Breach of Marriage Promise.*—There must be an offer of marriage or promise to marry by the one party made known to the other in order to create a contract for the breach of which action for damages will lie. 2 Amer. & Eng. Encyclopedia of Law, 520; Lawrence v. Cooke, 56 Me. 187; Roper v. Clay, 18 Mo. 383. The offer and also acceptance may be made through a friend or agent (Prescott v. Guyler, 32 Ill. 323), and need not be in express words. Cole v. Holliday, 4 Mo. App. 94; Royal v. Smith, 40 Iowa, 615. It need only appear that both parties understood it to be an offer of marriage. Howan v. Earle, 53 N. Y. 267; Vanderpool v. Richardson, 52 Mich. 336; Walnesly v. Robinson, 63 Ill. 41; Reed v. Clark, 47 Cal. 194; King v. Hersey, 2 Ind. 402; Cates v. McKinney, 48 Ind. 562; Burnham v. Cornwell, 16 B. Mon. (Ky.) 284; Waters v. Bristol, 26 Conn. 398; Blackburn v. Mann, 85 Ill. 222. The accepted promise must be certain and either absolute or upon contingencies which are legal and which must occur within a reasonable time. Clark v. Pendleton, 20 Conn. 495; Prescott v. Guyler, 32 Ill. 312. A man's promise to marry a woman if he married any one is void. Philips v. Medbury, 7 Conn. 568. A promise to marry a woman after she has had an operation performed, the operation not having been performed, has been held not binding. Gring v. Lerch, 112 Pa. St. 244. A woman's promise conditional on his getting a divorce from his wife (Noice v. Brown, 39 N. J. L. 133), or upon her dying (Paddock v. Robinson, 63 Ill. 99; Haviland v. Halstead, 34 N. Y. 643) is void. And so is a promise conditional on the promisee's having intercourse with him. Hanks v. Naglee, 54 Cal. 51. A continuing to live for a time as his mistress (Boigneres v. Boulan, 54 Cal. 146) as such promises are contrary to public policy. Force, fraudulent concealment and false representations may invalidate contracts to marry, just as they invalidate other contracts. 2 Amer. & Eng. Encyclopedia of Law, 524. A promise made at the point of a pistol or to get free from actual confinement would not be enforceable. McCann v. Hilderbrand, 85 Ind. 204. While a person is supposed to have inquired and learnt all about the fortune, condition, circumstances, etc., of another before promising to marry her (Gring v. Lerch, 112 Pa. St. 244), and while a woman is not bound to disclose anything (Roper v. Clay, 18 Mo. 383) except her previous unchastity (Denslow v. Van Horn, 16 Iowa, 476; Showman v. Wardwell, 32 Me. 275; Berry v. Bakeman, 44 Me. 164; Van Storch v. Griffin, 77 Pa. St. 504), or her unfitness for sexual intercourse (Gring v. Lerch, 112 Pa. St. 244), any false representations made by her or on her behalf with her knowledge (Footev. Hayne, 1 Car. & P. 546), for the purpose of deceiving the promisor, constitute a fraud, and his promise is not binding whether such false representations relate to her social position and fortune (Wharton v. Lewis, 1 Car. & P 529) or to her character. Bell v. Eaton, 28 Ind. 468.

CORRESPONDENCE.

VALIDITY OF SUNDAY CHURCH SUBSCRIPTIONS IN INDIANA.

To the Editor of the Central Law Journal:

The very excellent article of Mr. Edwards on Works of Charity, etc., on Sunday (39 Cent. L. J., 507), is marred in one particular. In stating the position of the Indiana court on the validity of subscriptions taken on Sunday for the support of public worship, he says that such contracts are held not binding, and cites Catlett v. Trustees M. E. Church, 62 Ind. 365 That case was expressly overruled in Bryan v. Watson, 127 Ind. 42. Since 1891, the Indiana court has been in line with the other courts of the country on this question.

JAS. M. HATFIELD.

Huntington, Ind.

BOOKS RECEIVED.

Practice in Attachment of Property for the State of New York, with Complete Forms. By George W. Bradner, Author of "Rules of Pleading," etc. Albany, N. Y.: Matthew Bender, Law Publisher, 511-513 Broadway. 1895.

American Probate Law and Practice. A Complete and Practical Treatise, Expository of Probate Law and Practice as it Obtains To-day, Including a Discussion of the General Principles Governing the Execution and Proof of Wills, the Devolution of Property, the Administration of Estates, and the Relations Subsisting Between Guardian and Ward. Applicable to all the States. By Frank S. Rice, Counselor at Law, Author of Rice on Civil and Criminal Evidence, etc. Albany, N. Y.: Matthew Bender, Law Publisher, 511-513 Broadway. 1894.

HUMORS OF THE LAW.

This is the way a Kentucky judge charged the jury the other day: "If you believe what the counsel for the plaintiff has told you, your verdict will be for the plaintiff; but if, on the other hand, you believe what the defendant's counsel has told you, you will give your verdict for the defendant. But if you are like me, and don't believe what either of them said, I don't know what you will do." The jury disagreed.

Ephraim Flint, the veteran lawyer of Dover, Me., who died recently, was once fined by a country justice of the peace for contempt of court in telling the magistrate too bluntly what he thought of one of his decisions. Mr. Flint was not taken back by the justice's order to his clerk. "All right," he said, "I have got a note in my pocket against you which have been trying to collect for the past ten years, and I'll endorse the fine on it. I never expected to get that much," and suiting the action to the words, pulled out the note and made the endorsement.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION — Decedent's Estate—Claim by State.—Rev. St. 1894, § 305 (Rev. St. 1881, § 304), providing that "limitations of actions shall not bar the State, except as to sureties," does not apply to Rev. St. 1894, § 2465 (Rev. St. 1881, § 2310), limiting the time for filing claims against a decedent's estate.—STATE v. EDWARDS, Ind., 38 N. E. Rep. 544.

2. ADVERSE POSSESSION — Color of Title.—Color of title is that which in appearance is title, but which in reality is no title. While the phrase "color of title," in the limitation act of 1874, means a paper title, it does not mean a perfect paper title. The statute, when its conditions are complied with, is intended as a protection to a person holding in good faith under a mere colorable title.—DE FORESTA v. GAST, Colo., 38 Pac. Rep. 244.

3. ADVERSE POSSESSION—Effect of Recitals in Deed.—Where title to a strip of land is conveyed by deed, with a reservation by the grantor of a way over it, possession of such strip by the grantee and his heirs and assigns for more than 20 years, adverse to the reservation, perfects in them a title to it, such that the grantee in a deed from them takes a fee, though such deed from them was expressly subject to the conditions of the original deed.—MCKINNEY v. LANNING, Ind., 38 N. E. Rep. 601.

4. ADVERSE POSSESSION—Requisites.—To constitute title by adverse possession, the possession must have been hostile in its inception, must continue without interruption for 20 years, and must be actual, visible, and exclusive; but it need not be under a rightful claim, nor under a muniment of title.—NOYES v. HEFFERNAN, Ill., 38 N. E. Rep. 571.

5. APPEAL — Notice.—Contractors to whom plaintiff furnished material for which he claimed a mechanic's lien, though made defendants below, are not adverse parties, on whom notice of appeal must be served.—OSBORNE v. LOGUS, Oreg., 38 Pac. Rep. 190.

6. APPEAL—Verdict.—An objection that a jury rendered a general instead of a special verdict cannot be raised for the first time on appeal.—TAGUE v. OWENS, Ind., 38 N. E. Rep. 541.

7. APPELLATE JURISDICTION—Bastardy.—Section 122 of the county court act (Rev. St. 1893, ch. 212), declares that, except in certain specified cases, appeals shall be taken from the county to the Circuit Court; while section 8 of the appellate court act (Rev. St. 1893, ch. 37, § 25), gives the appellate court jurisdiction of appeals from the county courts: Held, that the appellate court has jurisdiction only of appeals from county courts in cases excepted in said section 122.—STIVERS v. PEOPLE, Ill., 38 N. E. Rep. 574.

8. ASSIGNMENT FOR CREDITORS—Transfer of Stock.—Since Comp. Laws, § 200, provides that no transfer of corporate stock shall be valid, except between the parties, until the transfer is made on the books of the company, title to such stock does not pass by a general assignment, against creditors of the assignor, without such transfer on the books.—LYNDONVILLE NAT. BANK v. FOLSOM, N. Mex., 38 Pac. Rep. 252.

9. ATTACHMENT — Jurisdiction.—In an action commenced by attachment, and where there was no personal service of summons, and where the affidavit for attachment stated, as the only ground therefor, "that the defendant is not a resident of the State of North Dakota, or has departed therefrom," held, that the court acquired no jurisdiction.—BIRCHALL v. GRIGGS, N. Dak., 60 N. W. Rep. 842.

10. ATTORNEY AND CLIENT—Employment—Termination of Contract.—Where defendant employed a law firm to conduct a certain case to a final determination, when the fee was to be paid, the death of one member of such firm, during the pendency of such case, dissolved the partnership, and terminated such employment, but did not mature the firm's claim for compensation for services rendered before said death occurred.—LANDA v. SHOOK, Tex., 28 S. W. Rep. 135.

11. BANKS AND BANKING — Collection by Insolvent Bank.—Plaintiffs sent a draft to the defendant bank for collection. The bank collected it, and issued its own New York draft, payable to plaintiffs, for the amounts so collected, less exchange, and sent it to plaintiffs, who accepted it, and forwarded it for collection. The latter draft, however, was not paid, owing to the defendant bank's suspension: Held, that the bank was a debtor, and not a trustee, of plaintiffs.—BOWMAN v. FIRST NAT. BANK OF SPOKANE, Wash., 38 Pac. Rep. 211.

12. BANKS — Insolvency — Deposits — Preferences.—Where an insolvent bank makes collections for a depositor, but fails to remit before making a general assignment, though the account was kept separate from other accounts of the bank, and the funds turned over to the receiver were sufficient to pay it, and the depositor was ignorant of the bank's condition when he made the deposit, he is not entitled to preference over the general creditors.—COMMERCIAL & FARMERS' NAT. BANK OF BALTIMORE v. DAVIS, N. Car., 20 S. E. Rep. 370.

13. BASTARDY—Evidence.—In bastardy proceedings, statements of relatrix, made at the time of her travail, as to the father of her child, are inadmissible against defendant.—STATE v. TIPTON, Mont., 38 Pac. Rep. 222.

14. CANCELLATION OF DEED.—A father promised his son that, if the latter would live with and work for him during the father's life-time, he would advise to him certain lands, and, about 18 months before he died, made his will accordingly. Afterwards, and 9 days before he died, being very feeble in mind and body, and laboring under a delusion as to his son's conduct, he made a voluntary conveyance of a part of the lands to two of his grandchildren, who were in personal attendance upon him. The son fully performed the conditions of his father's promise: Held, the conveyance must be set aside as against the son.—KASTELL v. HILLMAN, N. J., 30 Atl. Rep. 535.

15. CANCELLATION— Stock Subscription — Estoppel—

Acquiescence.—One who is induced to subscribe for stock by a fraudulent representation cannot, after discovering the fraud, retain the stock in hopes that it will rise in value, or continue to act as a stockholder, and then disaffirm his subscription.— WEISIGER V. RICHMOND ICE MACH. CO., Va., 20 S. E. Rep. 361.

16. CARRIERS — Discrimination in Freight.— A contract for the transportation of freight from a point in Missouri to a point in Kansas for a rate less than that demanded and collected from other persons for a like service at the same time, where the usual rate is not unreasonable nor excessive, violates the provisions of the interstate commerce act, and is utterly void.— CHICAGO, R. I. & P. RY. CO. V. HUBBELL, Kan., 38 Pac. Rep. 266.

17. CARRIERS — Interstate Act— Connecting Lines.— An interstate carrier does not subject another carrier to an "undue or unreasonable disadvantage" (Interstate Commerce Act, § 3, cl. 2) by exacting the prepayment of freight on all property received from it at a given station, although it does not require charges to be paid in advance on freight received from other individuals and competing carriers at such station.— LITTLE ROCK & M. R. CO. V. ST. LOUIS S. W. RY. CO., U. S. C. C. of App., 63 Fed. Rep. 775.

18. CARRIERS OF PASSENGERS— Alighting from Train —Contributory Negligence.—Whether a passenger who knowingly and intentionally alights from a slowly moving train is guilty of contributory negligence is a question of fact, depending upon the attending circumstances.—CHICAGO & A. R. CO. V. BYRUM, Ill., 38 N. E. Rep. 578.

19. CARRIERS OF PASSENGERS—Railroad Company— Misconduct of Conductor.—In an action against a railroad company for an assault by its conductor on a passenger, where it appeared that the latter, as he presented his ticket, made a remark to the conductor, who thereupon struck the plaintiff with his fist, and then with his lantern, it was proper to refuse to charge that if the jury believed the plaintiff used foul and abusive language to the conductor, which caused or provoked the assault, and that, in making such assault, the conductor was not acting within the scope of his duties, but was carrying out a personal purpose and feeling.—BALTIMORE & O. R. CO. V. BARGER, Md., 30 Atl. Rep. 560.

20. CONSTITUTIONAL LAW — School Districts — Payment of Claims.—Where no obligation, legal or moral, rests upon a board of education, to pay a claim asserted against it by a private individual, an act of the general assembly, procured by the claimant, commanding such board to levy a tax for its payment, is unconstitutional and void.—BOARD OF EDUCATION V. STATE, Ohio, 38 N. E. Rep. 614.

21. CONTRACT— Construction.—A contract to deliver a certain quantity of sulphide ores (grade or quality not specified) to a smelting company for the purpose of having the metal values contained therein extracted, and reduced to a marketable condition, for the benefit of the owner of the ores, after compensating the smelting company for the labor and expense of smelting, is not a contract for the sale of the ores.— PATRICK V. COLORADO SMELTING CO., Colo., 88 Pac. Rep. 236.

22. CONTRACT—Illegal— Recovery of Money Paid.— When a plaintiff is in *pari delicto* with the defendant, money paid by the former to the latter cannot be recovered back. This rule applies where the act done is in itself immoral, or a violation of the general laws of public policy, but it does not bar a recovery where the law violated is intended for the protection of the citizen against oppression, extortion, or deceit. Money paid on a usurious contract in excess of the principal and legal interest may be recovered back.—TAYLOR V. HINTZE, N. J., 30 Atl. Rep. 551.

23. CONTRACT OF CORPORATION—Ratification.—A contract with a corporation which was void, because not in writing, or sealed or signed by the corporate officers, as required by Code, § 683, cannot be ratified, though such section has been repealed.—SPENCER V. WILMINGTON COTTON MILLS, N. Car., 20 S. E. Rep. 372.

24. CORPORATE DEED—Execution.—Where a corporate deed is signed in the corporate name by its president, vice-president, secretary and treasurer, who constitute all the stockholders, directors, and officers of the corporation, and the corporate seal is affixed, it is properly executed as a common-law deed.—HEATH V. BIG FALLS COTTON MILLS, N. Car., 20 S. E. Rep. 369.

25. CORPORATION—Defense of Ultra Vires.—Const. art. 16, § 16, providing that no corporate body shall be created "with banking and discounting privileges," does not render the act of a corporation not having such privileges in discounting a note illegal and void; and a defense to an action by such corporation, on a note discounted by it, that the transaction was illegal, is a defense simply of *ultra vires*.—LOGAN V. TEXAS BLDG. & LOAN ASS'N, Tex., 28 S. W. Rep. 141.

26. CORPORATION— Invalidity of Contract. — After a corporation receives benefits under a contract, it cannot set up as a defense to an action thereon that it had no right to do business in the State in which the contract was made.—WILLIAMS V. BANK OF COMMERCE, Miss., 16 South. Rep. 238.

27. CORPORATIONS—Subscription for Railway Stock. —One who subscribes to the capital stock of a railway company chartered under the general law for incorporating such companies must take notice, notwithstanding any representations made to the contrary, that the railroad company has no power to issue or deliver to its stockholders any stock in an existing or future construction company. It follows that oral representations made touching the construction company, its resources, or the value of its stock are not pertinent as a defense to an action by the railroad company against a subscriber to enforce payment of his subscription.—RUSSELL V. ALABAMA MIDLAND RY. CO., Ga., 20 S. E. Rep. 350.

28. CORPORATIONS—Validity of Mortgage.—A mortgage by a corporation, though not authorized by a majority of the stockholders at a "regular general meeting," as required by its charter, is valid as against an attack by corporate creditors not stockholders.— ANTIETAM PAPER CO V. CHRONICLE PUB. CO., N. Car., 20 S. E. Rep. 366.

29. COSTS — Action by Stockholder.—Where a stockholder of a corporation, on behalf of himself and other stockholders, sues to set aside a fraudulent conveyance by the officers of the corporation of the corporate property, and for its recovery, he is, if successful, entitled to be reimbursed, from the corporate property, the amount of his reasonable attorney's fees. —GRANT V. LOOKOUT MOUNTAIN CO., Tenn., 28 S. W. Rep. 90.

30. COSTS—Witness' Fees.—In an action against a married man, defendant cannot tax witness' fees for his wife, who testified on the trial.—COLE V. ANGEL, Tex., 28 S. W. Rep. 93.

31. COURTS — Supreme Courts—Jurisdiction.—The Supreme Court has exclusive jurisdiction of an appeal from a judgment setting aside a judgment of condemnation.—STATE V. ROMBAUER, Mo., 28 S. W. Rep. 75.

32. CRIMINAL EVIDENCE—Murder—Declarations.—The rights of a defendant in a criminal action should not be prejudiced by the unauthorized declarations of another person, made out of his sight and hearing, and such unauthorized declarations do not become competent nor admissible merely because denied by the person who is alleged to have uttered them. The admission of such statements, and the comments of counsel thereon, were highly prejudicial to the defendant in this case.—STATE V. KEEFE, Kan., 38 Pac. Rep. 302.

33. CRIMINAL LAW—Evidence of Another Crime.—On a trial for larceny, testimony of a theft other than the one charged, and shortly before it, is not admissible. —PEOPLE V. TUCKER, Cal., 38 Pac. Rep. 195.

34. CRIMINAL LAW — Interstate Extradition.—A resident of North Carolina, who, while in Pennsylvania, procures, by false representations, a contract for the shipment of goods from that place to his residence, and then returns there, and receives the goods, and is indicted in Pennsylvania, for false representations, is a fugitive from justice, and may be extradited.—IN RE SULTAN, N. Car., 20 S. E. Rep. 375.

35. CRIMINAL LAW—Justifiable Homicide.—Pen. Code, § 197, provides that to constitute justifiable homicide, if defendant was the assailant in a mortal combat, he must in good faith have endeavored to decline any further struggle before the homicide was committed: Held, that where one accused of murder commenced the combat, but in good faith tried to withdraw before the homicide, and was followed by deceased, who continued the combat, the fact that deceased, by reason of injuries sustained at defendant's hands, was unable to realize that defendant sought to withdraw, does not limit the right of defendant to claim that the killing was done in self defense.—PEOPLE V. BUTTON, Cal., 38 Pac. Rep. 200.

36. CRIMINAL PRACTICE— Conspiracy—Indictment.—An indictment which sets out that certain persons, being members of, composing and acting as a municipal board, conspired to cheat the city of its moneys, by corruptly purchasing supplies for the city at excessive prices, and by paying salaries to persons who rendered no services, is good.—STATE V. STATE, N. J., 30 Atl. Rep. 541.

37. CRIMINAL PRACTICE—Homicide—Indictment.—An indictment for murder, which describes the wound in one place as above the nipple of the left breast, and subsequently as below the nipple of the left breast, is not void for repugnancy and inconsistency, as the latter recitation is surplusage, and covered by section 3999, Code, which provides that indictments shall not be void for the omission or insertion of "words of mere form and surplusage."—ROBERTSON V. COMMONWEALTH, Va., 20 S. E. Rep. 362.

38. CRIMINAL PRACTICE — Indictment for Forgery.—Though Code 1892, § 1358, provides that, when it shall be necessary to make an averment in an indictment as to any instrument, it shall be sufficient to describe such instrument by any name or designation by which it is usually known, or by the purport thereof, the description of an instrument in an indictment for forgery as "a certain instrument of writing, commonly called a 'deed,' purporting to be the act of one F, by which the interest in certain real property purported to be transferred and conveyed by said F to said R," is insufficient.—ROBERTS V. STATE, Miss., 16 South. Rep. 233.

39. DEED—Parol Evidence to Explain.—A deed described a boundary as follows: "*Y del camino a las lomas;*" meaning, "And from the road to [*las lomas*] the hills." There was strong evidence that "*las lomas*" signified, in that vicinity, a certain kind of hills: Held, that the use of the term constituted a latent ambiguity, which could be explained by parol evidence.—GENTILE V. CROSSAN, N. Mex., 38 Pac. Rep. 247.

40. DOMICILE—Evidence.—The question whether one who has moved from a county still has a domicile therein depends on whether he intends to return to such county to live.—BENAVIDES V. GUSSETT, Tex., 28 S. W. Rep. 113.

41. EJECTMENT—Counterclaim—Tax Sale.—In ejectment against a purchaser at a tax sale, he cannot allege as a counterclaim that plaintiff's certificates of redemption, which render his tax deeds void, are forgeries and fraudulent, and obtain affirmative relief canceling such certificates as a cloud on his title.—BROWN V. COHN, Wis., 60 N. W. Rep. 826.

42. EJECTMENT — Mesne Profits — Res Judicata.—In ejectment, defendant pleaded the value of mesne improvements, and, on judgment for plaintiff, purchased the lands under Code 1892, §§ 1673, 1674: Held, that while, in an action by the plaintiff to recover profits and damages, defendant could not set-off the value of the improvements, yet having been pleaded in the former action, such action was a bar to the suit for mesne profits and damages.—GILLUM V. CASE, Miss., 16 South. Rep. 236.

43. EQUITABLE LIENS—Chattel Mortgage.—Where an invalid chattel mortgage has been given under a previous valid agreement, the mortgagee, after accepting the mortgage, and asserting its validity, cannot claim an equitable lien on the property, based on the agreement.—HEATHMAN V. ROGERS, Ill., 38 N. E. Rep. 577.

44. EQUITABLE LIEN—Waiver by Parol.—Where one who has an equitable right to a first mortgage on land, because the land was by mistake omitted from a mortgage to him, agrees to waive his equity in consideration of a note, with indorsers, secured by a second mortgage, a person who takes a mortgage on the property will be protected, though there is nothing of record to show that the equitable lien was waived, the lien itself not being of record.—PACKARD V. DELFEL, Wash., 38 Pac. Rep. 208.

45. EXECUTION SALE—Redemption by Creditor.—Under Rev. St. ch. 77, § 6, which provides that no execution shall issue on any judgment after seven years from the time the same becomes a lien, unless the judgment be revived, a creditor who has his claim allowed against the estate of his deceased debtor, and who, by section 27, is considered a judgment creditor for the purpose of redemption from execution sales, must issue the special execution provided for therein within seven years from the date of the allowance of his claim, or his right to redeem is gone.—MCILWAIN V. KARSTENS, Ill., 38 N. E. Rep. 555.

46. FEDERAL COURT—Territorial Courts—State Court.—Where a case pending in a territorial supreme court, on a petition for rehearing, at the time the territory becomes a State, is continued in the State court, instead of being removed to the Federal court on request as it might have been, the judgment of the State court, on denying the rehearing, cannot be reviewed by the Supreme Court of the United States, no federal question being involved.—NORTHERN PAC. R. CO. V. HOLMES, U. S. S. C., 15 S. C. Rep. 28.

47. FIXTURES—What Constitutes.—A movable sugar wagon, constructed of sheet and cast iron, 4 feet long, 3 feet wide, and 26 inches deep, with three adjustable low wheels, about 8 inches in diameter, used in a sugar mill for the purpose of holding syrup and conveying it from place to place by being pushed by hand, not actually or constructively annexed to the realty, or to anything appurtenant thereto, but being placed in the mill for use only, and not to enhance the value of the realty, is personal property, and not a fixture.—WINSLOW V. BROMICH, Kan., 38 Pac. Rep. 275.

48. FRAUDULENT CONVEYANCES.—A creditor purchasing property from a failing debtor will be affected by the intent of the latter to defraud his other creditors, where he shares that intent, and aids in giving effect to it, and the transaction will not stand as to the other creditors, whatever may be its effect between the immediate parties.—MARTIN V. ESTES, Mo., 28 S. W. Rep. 65.

49. HIGHWAYS—Liability of County.—Under Rev. St. §§ 1303, 1304, 1307, county commissioners, in laying out a highway, act merely as the agents of the towns, and the county is not liable to a landowner whose property is wrongfully injured during the construction of a highway.—DODGE V. ASHLAND COUNTY, Wis., 60 N. W. Rep. 830.

50. HOMESTEAD—Abandonment.—Evidence that one left his residence for that of his son, and sold off his personal property, and made some declarations of his intentions as to his property, is not sufficient to show an abandonment of his homestead, where it also appears that shortly afterwards she made arrangements to go back there and live, but died before completing them.—CURTIS V. COCKRELL, Tex., 28 S. W. Rep. 129.

51. HUSBAND AND WIFE—Money Loaned. — Hill's

Code, § 2870, provides that the husband or wife, as owner, may sue to recover property of which the other has secured possession or control, or "for any right growing out of same:" Held, that the wife may recover interest on money loaned to her husband.—GRUBBE v. GRUBBE, Oreg., 38 Pac. Rep. 182.

52. HUSBAND AND WIFE—Use of Wife's Separate Estate.—Where a husband applies the principal of his wife's separate property in the support of their family, she may, in the absence of an agreement to repay the same, recover it back.—HAMMOND v. BLEDSOE, Ind., 38 N. E. Rep. 530.

53. INFANT—Transaction with Disaffirmance. — One dealing with minors in relation to real property, with full knowledge of their incapacity, cannot insist upon a restoration of the consideration as a condition precedent to their right to disaffirm, under Rev. St 1881, § 2945 (Rev. St. 1894, § 3365), providing for such restoration where the minor has falsely represented himself to be of age, and his grantee acted in good faith, and relied upon those representations. — SHAUL v. RINKER, Ind., 38 N. E. Rep. 593.

54. INJUNCTION—Sale under Mortgage.— Where one of several codevisees of land buys a mortgage which is a lien on the land, he will be enjoined from selling the land thereunder until it is determined what amount of the mortgage the respective interests of himself and his codevisees are subject to, so that the latter may satisfy the mortgage by paying their proportion of the mortgage debt.—FISHER v. HARTMAN, Penn., 30 Atl. Rep. 513.

55. INJUNCTION—Use of Trade Secrets.—Plaintiff employed defendant in the manufacture of certain oils and greases. Before defendant entered such employment he agreed not to divulge or to use any secrets of the business plaintiff might make known to him. Subsequently, he left plaintiff's employ, and began the manufacture of similar oils and greases, using plaintiff's secrets therein: Held, that a permanent injunction was properly issued to restrain him from so doing.—FRALICH v. DESPAR, Penn., 30 Atl. Rep. 521.

56. INSURANCE—Effect of Arbitration.—Where a submission to arbitration as to the amount of a loss expressly states that it is made "without reference to any other question or matter of difference within the terms and conditions of the insurance," it neither waives the company's right to rebuild instead of paying, as provided for in the policy, nor excludes proof of a previous oral waiver of such right.—PLATT v. ÆTNA INS. CO., 38 N. E. Rep. 580.

57. INSURANCE—Limitation by Policy.—An insurance company is estopped to deny the existence of facts known to its solicitor at the time the policy was written by him, though the policy contains a clause that, "in any matter relating to this insurance, no person, unless authorized in writing, shall be deemed the agent of the company."—HART v. NIAGARA FIRE INS. CO. OF STATE OF NEW YORK, Wash., 38 Pac. Rep. 213.

58. INTOXICATING LIQUORS—Illegal Sales.—A charge in an information, substantially in the language of the statute, that the defendant not being "lawfully and in good faith engaged in the business of a druggist," did, at a certain time and place sell intoxicating liquors, is sufficient.—STATE v. LOOKER, Kan., 38 Pac. Rep. 288.

59. JUDGMENT—Collateral Attack.—In an attack upon the judgment of a court of general jurisdiction, every fact not negatived by the record will be presumed in aid of the judgment, and it will be held void only when it affirmatively appears upon the record that the court had no jurisdiction to render it.—MUNCE v. MCLAREN, Wash., 38 Pac. Rep. 205.

60. JUDGMENT—Collateral Attack.—A decree reciting that certain defendants "were each duly served with summons personally served on each of them," and that the other defendants were served with notice of the pendency of the suit by publication in a newspaper, "in all respects as provided by statute," is not subject to collateral attack for want of jurisdiction of the defendants. — SWIFT v. YANAWAY, Ill., 38 N. E. Rep. 589.

61. JUDICIAL SALE—Fraud—Rescission.—Where a person who desires to buy land at a judicial sale secretly enters into a fraudulent arrangement with a part of the persons interested in the land, by which he agrees, if such persons will assist him in acquiring the land, he will pay them a sum of money in addition to his bid, so that they shall receive more than the others, and his object in making the arrangement is to defraud all the persons interested in the land,—both those with whom the arrangement is made, as well as those with whom it is not made,— his fraud is so iniquitous in its character that the court, in undoing his wrong, must administer justice regardless of the consequences to him.—KENNY v. LEMBECK, N. J., 30 Atl. Rep. 525.

62. JUDICIAL SALE—Purchaser — Forcible Entry.—A purchaser of land at a sheriff's sale may enter if he can do so peaceably, but the tenant is bound to surrender only when proceedings under the statute or a judgment in ejectment require it.—FRICK v. FISCUS, Penn., 30 Atl. Rep. 515.

63. LIFE INSURANCE—Failure to Pay Premium.— A failure to pay the premium note due on an insurance policy, which provides that a failure topay the premium notes when due shall render the policy null and void, without notice to the parties interested or other action on the part of the company, will render the policy void without any formal cancellation of the policy.—UNION CENT. LIFE INS. CO. v. CHOWNING, Tex., 28 S. W. Rep. 117.

64. LIFE INSURANCE—Non-payment of Premium.—The giving of a note for a premium to an agent, who had no power to postpone payment of the premium or to substitute anything for it, which was never accepted by the company or brought to its knowledge, will not keep alive a policy which provides that the company assumes no risk except for that portion of the year for which the premium shall have been actually paid in cash in advance.—SMITH v. NEW ENGLAND MUT. LIFE INS. CO., U. S. C. C. of App., 63 Fed. Rep. 769.

65. LIMITATION OF ACTIONS — Acknowledgment.—A letter written by defendant to plaintiff, containing the following: "I think you are a little mistaken about my notes amounting to over $800. Even at compound interest, they would not amount to that much. The whole amount $600, on interest three years at 8 per cent., would only be $48, and for three years would be $144, making a grand total of $744, and you ask me to pay $300, would leave $444. If each share will be between five and six hundred dollars, what is the use for me to pay more than is necessary merely to have it returned,"—and which refers to the notes in controversy, is a sufficient acknowledgment of an existing liability to relieve the action on the notes from the bar of the statute of limitations.—CLARK v. KING, Kan., 38 Pac. Rep. 281.

66. MARINE INSURANCE—Policy.—A literal compliance with a clause in an open policy that "no shipment is to be considered as insured until approved and indorsed hereon by this company," will not be required where it appears that it was a physical impossibility to make such indorsements, no space being left therefor, and under the settled method of doing such business, blank books were furnished by the company in which the insurer entered the shipment, etc., which were examined and adjusted each month by the local agents. —CALLAWAY v. ORIENT INS. CO., U. S. D. C. (Ohio), 63 Fed. Rep. 830.

67. MASTER AND SERVANT — Negligence—Dangerous Premises.—Where the servant is injured through failure of the master to use reasonable care to provide a safe working place, the master cannot absolve himself from liability by showing that he had delegated to an agent the duty of keeping the place safe.—MUNCIE PULP CO. v. JONES, Ind., 38 N. E. Rep. 547.

68. MASTER AND SERVANT — Railroad Company—Inspection of Foreign Cars.—A railroad company is not responsible to its switchman for injuries caused by defects in a foreign car, if it has inspected the car, and warned him of its defects.—ATCHISON, T. & S. F. R. CO. v. MYERS, U. S. C. C. of App., 63 Fed. Rep. 793.

69. MEASURE OF DAMAGE—Mental Anguish.—Plaintiff, in company with her nephew, a boy of six years, was in defendant's sleeper, and requested the porter and conductor to awake her in time before reaching her destination. They failed to do so, and she was carried past the depot, when the train was stopped, and the boy was put off by the porter, but before plaintiff could alight, the train was again started. After going some distance, it was again stopped, and plaintiff was allowed to alight: Held, that her damages should be confined to what she suffered on her own account, and that it was error to allow her to recover for mental anguish because of the fright or distress of the child which was with her.—PULLMAN PALACE-CAR CO. v. TRIMBLE, Tex., 28 S. W. Rep. 96.

70. MECHANICS' LIENS — Receivers.—Where a contractor's property has been put into the hands of a receiver, a material man who has furnished him with materials, and who has released his lien on the building for which it is furnished, has no lien on the fund in the receiver's hands, arising from payments made for the construction of such building.—GRIFFIN v. BOOTH, Ill., 38 N. E. Rep. 551.

71. MORTGAGE BY GUARDIAN—Validity.—The district court may allow the guardian of an infant's estate to mortgage land for an amount sufficient to pay off a mortgage on the land, which is overdue, and on which foreclosure is threatened.—NORTHWESTERN GUARANTY LOAN CO. v. SMITH, Mont., 38 Pac. Rep. 224.

72. MUNICIPAL CORPORATION—Duty To Light Streets.—A city which is under no statutory obligation to light its streets is not, as matter of law, bound, when lighting them voluntarily, to do it in such a manner as to enable persons using them to see any obstruction that the city may have placedin the street, irrespective of whether the obstruction, such as a water plug, was a reasonable and proper one or not.—CITY OF COLUMBUS v. SIMS, Ga., 20 S. E. Rep 332.

73. MUNICIPAL CORPORATION—Public Improvements—Assessment.—The fact that, owing to a difference in the grades of two streets, a sidewalk at their intersection is constructed with a grade from building line to curb which is prohibited by an ordinance, does not render invalid the special assessments levied to pay therefor, where such increase in the grade does not render the walk less valuable or less safe to pedestrians.—STEFFEN v. FOX, Mo., 28 S. W. Rep. 70.

74. MUNICIPAL CORPORATION — Street Paving Ordinance.—A provision in a street-paving ordinance that a street car company shall pay for paving the part of the street lying inside its track and one foot on the outside edge of its rails cannot be complained of by the owner of abutting property.—BELL v. CITY OF ALTON, Ill., 38 N. E. Rep. 556.

75. MUNICIPAL CORPORATION—Water Company Franchise.—Though the action of the supervisors of a town in granting a franchise to a water company was invalid, a ratification thereof by the common council after the town had become chartered as a city, and was empowered to so provide for a water supply, by incorporating into a city ordinance the town ordinance granting the franchise, creates a contract between the city and water company, which is binding when accepted by the company. — CITY OF ASHLAND v. WHEELER, Wis., 60 N. W. Rep. 818.

76. NATIONAL BANKS—Discrimination in Taxation.—In an action by a national bank, based on section 5219, Rev. St. U. S., providing that a taxation on such banks shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, an allegation that "all the moneyed capital owned by resident individual citizens, and invested in interest-bearing loans, discounts, and securities, except that owned by and invested in incorporated banks," is unassessed capital, etc., does not set forth with sufficient particularity that there are left unassessed classes of moneyed capital which come into competition with national banks.—WASHINGTON NAT. BANK OF SEATTLE v. KING COUNTY, Wash., 38 Pac. Rep. 219.

77. NATURALIZATION PROCEEDINGS — Alien.—An applicant for naturalization is a suitor who, by his petition, institutes a proceeding in a court of justice for the judicial determination of an asserted right, and such petition must allege the existence of all the facts, and the fulfillment of all the conditions upon which the statutes (Rev. St. §§ 2165, 2167) make the right dependent, and must be supported by legal proofs of the facts on which the petition rests.—IN RE BODEK, U. S. C. C. (Pa.), 63 Fed. Rep. 813.

78. NEGLIGENCE—Electric Company—Damage.—In a suit against an electric light company for damage caused by the fall of one of its lamps, it was proper to charge that defendant's duty was to provide strong and sound rope and wire to securely hold the lamp, to furnish good pulleys, properly secured, and to have the rope properly run through such pulleys, and to have the lamp properly affixed to the rope, and that the occurrence of the accident raised no presumption of defendant's negligence, but that its liability depended upon whether it exercised reasonable care in keeping the lamp properly suspended and secured.—EXCELSIOR ELECTRIC CO. v. SWEET, N. J., 30 Atl. Rep. 553.

79. NEGLIGENCE—Evidence.—A boy 10 years old, while standing in a street, near a railroad track, waiting for a train to pass by, stepped back from the track to avoid the train, and thereby fell against a pile of ashes left in the street by the railroad company, slipped under the cars and was killed: Held, that there was sufficient evidence of the railroad company's negligence and the boy's exercise of due care to justify submitting these issues to the jury.—CHICAGO & A. R. CO. v. NELSON, Ill., 38 N. E. Rep. 560.

80. NEGOTIABLE INSTRUMENTS — Drafts.—Where a trust company, by agreement with a packing company, pays the tickets issued by the packing company in payment of purchases at a branch establishment, and the packing company daily issues to the trust company vouchers for such payments, which provide that, when approved and signed, they shall become drafts on the packing company, payable through certain banks, such vouchers, approved and signed, are not negotiable, though assignable under Code Iowa, § 2084.—SIOUX NAT. BANK v. CUDAHY PACKING CO., U. S. C. C. (Iowa), 63 Fed. Rep. 805.

81. NEGOTIABLE INSTRUMENTS — Legal Assignment—Rights of Sureties.—Where a master in chancery takes notes in settlement of deferred payments for land officially sold by him, the fact that he unlawfully assigned the notes, and received the money from the assignee, which he embezzled, does not give the sureties on his official bond, who have been compelled to make good the loss, a right to compel the makers of the notes to pay them a second time, after they have paid them, in good faith, to the assignee.—LATHAM v. FOLEY, Ill., 38 N. E. Rep. 557.

82. NEGOTIABLE INSTRUMENT—Promissory Note—Consideration.—Where a promissory note is duly executed and delivered, a sufficient consideration therefor will be presumed, though none is expressed.—WILSON v. WILSON, Oreg., 38 Pac. Rep. 189.

83. NEGOTIABLE INSTRUMENT—Purchase Money Note—Warranty.—In order to sustain an assignment of error in overruling a demurrer to two paragraphs of an answer, it must appear that both paragraphs were demurrable. A surety on a note given for the price of a chattel may, in an action on the note, set up the breach of a warranty in the contract of sale.—CRIST v. JACOBY, Ind., 38 N. E. Rep. 543.

84. PARENT AND CHILD—Custody of Child.—In a *habeas corpus* proceeding by a mother, the father being dead, to obtain the custody of an infant child from its paternal grandparents, who have had the care and possession of the child from infancy, the future welfare of such child is the paramount consideration; and, under the evidence in this case, it is held that the best interests of the child will not be subserved by removing her from the custody of the grandparents.—IN RE SNOOK, Kan., 38 Pac. Rep. 272.

85. PARTNERSHIP—Suit for Dissolution.—A complaint to dissolve partnership, which alleges that defendant had collected large sums due the partnership, and had refused to account for them; that the firm was indebted to plaintiff for advancements, which should have been paid before defendant was entitled to any share of the proceeds of the firm business; that the firm was indebted to other parties; and that defendant was insolvent,—states a cause of action.—ADAMS V. SHEWALTER, Ind., 38 N. E. Rep. 607.

86. PARTNERSHIP — Suit on Note.—An action at law is maintainable by one partner against another upon a promissory note executed by the one to the other, involving particular items or transactions of the partnership business.—WILSON V. WILSON, Oreg., 38 Pac. Rep. 185.

87. PLEADING—Custom.—Evidence of a custom is not admissible to make it a part of the contract sued on, unless it is pleaded.—ANDERSON V. ROGGE, Tex., 28 S. W. Rep. 106.

88. PLEDGE — Collateral Security—Assignment of Claim.—A life insurance policy, assigned by an insolvent debtor, as security, to one of his creditors, becomes the property of his estate upon the transfer by that creditor of his claim to another.—MORGAN V. DUGAN, Md., 30 Atl. Rep. 558.

89. QUIETING TITLE—Tax Sale.—A holder of a tax deed is not a necessary party to an action between two claimants of the property to quiet title in one of them as against the other.—SHEED V. DISNEY, Ind., 38 N. E. Rep. 594.

90. QUO WARRANTO TO TRY TITLE TO OFFICE.—An action in *quo warranto* to test the right to hold the position of director of an agricultural society cannot be brought by persons claiming the place on their own relation.—CRAWFORD V. STATE, Ohio, 38 N. E. Rep. 614.

91. RAILROAD COMPANY—Accident at Crossing.— In an action against a railroad company to recover for injuries resulting from a collision with a team and wagon at the crossing of a highway, where it is claimed that those in charge of the train failed to give the required statutory signals on approaching the crossing, the admission of testimony that such signals were not given on the same train at another crossing a mile and a half further along, and which was reached within two minutes after passing the crossing where the collision occurred, is not error.—ATCHISON, T. & S. F. R. CO. V. HAGUE, Kan., 38 Pac. Rep. 257.

92. RAILROAD COMPANY — Crossing — Contributory Negligence.—A pedestrian, struck by a passenger train at a railroad crossing, who could at any point within 48 feet of the track have seen the train along the track for a distance of 425 feet, was guilty of contributory negligence, thought the gate was up, where she though that they did not fall for yard engines; as, had she looked for such engines, she would have seen the train.—DAWE V. FLINT & P. M. R. CO., Mich., 60 N. W. Rep. 838.

93. RAILROAD COMPANY—Damages.—Where the complaints states that the defendant railroad company negligently permitted its right of way to become overgrown with grass and weeds; that there had been but little rain, and that said grass and weeds were dry and easily fired; that sparks were negligently permitted to escape from defendant's engine, which ignited said weeds and grass; and that such fire was communicated to plaintiff's land through no fault of his own, but through defendant's negligence, and burned the same, to his damage,—it is sufficient on demurrer.—TERRE HAUTE &L. R. CO. V. WALSH, Ind., 38 N. E. Rep. 534.

94. RAILROAD COMPANY — Injury to Empolyee.—A complaint alleging that plaintiff was employed by defendant as a fence builder along its line of railroad, and that while, under orders from a superior, he was propelling a hand car, which it was necessary to use in his work, defendant's train suddenly and without warning of any kind appeared, coming at a high rate of speed around a sharp curve, where there was also a deep cut, preventing a view of the tracks beyond, and that plaintiff jumped from the hand car to avoid the danger, and was injured,—states a cause of action.—SCHMIDT V. MONTANA CENT. RY. CO., Mont., 38 Pac. Rep. 226.

95. RAILROAD COMPANY—Injury to Employee — Mistake of Surgeon.—A railroad company which procures competent surgeons to attend a brakeman injured in its employ, and proceeds to transport him to a hospital, in pursuance of the advice and direction of such surgeons, and complies with all their directions as to his safety and care, is not liable for any mistake, or error in judgment, or want of foresight in such surgeons.—ATCHISON, T. & S. F. R. CO. V. ZEILER, Kan., 38 Pac. Rep. 282.

96. RAILROAD COMPANY — Injuries to Live Stock.—Rev. St. 1894, § 5323, relating to the fencing by a railroad company of its tracks, though it does not compel them to fence their road through uninclosed and unimproved lands, leaves them none the less liable for stock killed by a failure to fence through such lands.—NEW YORK, C. & ST. L. R. CO. V. ZUMBAUGH, Ind., 38 N. E. Rep. 531.

97. RAILROAD COMPANY—Liability for Mail Agent's Negligence.—A notice with respect to throwing United States mail bags off moving trains of the Pennsylvania Railroad Company uses this language: "It must be distinctly understood, however, that this does not in any way relieve baggage masters and mail agents from using all possible precautions against liability of injuring any one in throwing off mail:" Held, that on trains carrying a mail agent the failure of baggage masters to observe how the mail agent performed his duty did not, under this notice, make the railroad liable to one injured by a mail bag carelessly thrown by the United States official.—PENNSYLVANIA R. CO. V. RUSS, N. J., 30 Atl. Rep. 524.

98. RAILROAD COMPANIES — Maintaining Stations—Mandamus.—Where a railroad runs through two adjoining municipalities, one of which is practically a suburb of the other, and which are connected by street cars, it will not be compelled by *mandamus* to establish a station at the suburb, where the business of such suburb would not pay for the expense of maintaining such a station, and the inhabitants can travel in either direction by going to a station very near one edge of the limits of the suburb.—CHICAGO & A. R. CO. V. PEOPLE, Ill., 38 N. E. Rep. 562.

99. RAILROAD COMPANY — Municipal Corporation—Street Car Company.—Permission given by ordinance to a street car company to run its cars on a certain street is, when acted on by the company in some substantial manner, so that to revoke it would be inequitable, neither a franchise nor a mere license, but a contract binding the city according to its terms.—CITY OF BELLEVILLE V. CITIZENS' HORSE RY. CO., Ill., 38 N. E. Rep. 584.

100. RAILROAD COMPANY — Street Railway.—As the right of way acquired by a steam railroad company across a street is subject to the easement of the public in the street, and as the operation of a street railway imposes no additional burden on a street, a street railway company, which has acquired from the local authorities permission to build so as to cross the tracks of a steam railroad where they intersect a street, may construct its road across such tracks without compensation to the steam railroad company.—CHICAGO & C.

TERMINAL RY. CO. v. WHITING, H. & E. C. ST. RY. CO., Ind., 38 N. E. Rep. 604.

101. RAILROAD COMPANY—Street Railways—Easement.—The trolley system of propelling street cars, as at present used for the transportation of passengers through the streets of a city, is within the public easement over urban highways.—STATE v. MAYOR, ETC., OF JERSEY CITY, N. J., 30 Atl. Rep. 531.

102. RAILROAD IN RECEIVER'S HANDS—Reduction of Wages.—Where the wages paid to faithful and competent employees of a railroad in the hands of a receiver are not shown to be excessive for the labor performed, and are not higher than the wages paid to like employees on other lines of similar character, operated under like conditions through the same country, the court will not, against the protest of its said employees, reduce their wages because of inability of the railroad to pay dividends or interest, even though present opportunity exists for securing other employees for less wages.—UNITED STATES TRUST CO. OF NEW YORK v. OMAHA & St. L. RY. CO., U. S. C. C. (Iowa), 63 Fed. Rep. 737.

103. RELEASE—Fraudulent Procurement.—A finding in an action for personal injuries that a release was procured by fraud will not be disturbed on error, where it appears that plaintiff was unconscious for many hours after the accident, and, because of the severity of the pain, was kept under narcotics for two weeks or more, and three days after the accident, while all others save his nurses were denied access to him, defendant's agents procured his signature to the release, which there was evidence tending to show he could not read and did not read, and which was not read to him, and was signed in reliance upon the representations that the accident was caused by another company, which was alone responsible, and that the release was only a receipt for the estimated amount of plaintiff's medical expenses and loss of time.—UNION PAC. R. CO. v. HARRIS, U. S. C. C. of App., 63 Fed. Rep. 800.

104 REMOVAL OF CAUSES—Federal Question.—Under Acts March 3, 1887, ch. 373, and Aug. 13, 1888, ch. 866, a cause not depending on the citizenship of the parties, nor otherwise specially provided for, cannot be removed from a State court into the Circuit Court of the United States, as one arising under the constitution, laws, or treaties of the United States, unless the facts making it removable appear by plaintiff's statement of his claim; and the want of such facts cannot be supplied by a statement of them in the petition for removal or subsequent pleadings.—CHAPPELL v. WATERWORTH, U. S. S. C., 15 S. C. Rep. 34.

105. REPLEVIN — Pleading—Fraudulent Transfer.—In replevin against a sheriff who justifies under an execution against a third person, defendant cannot show that the execution debtor transferred the property to plaintiff to defraud his creditors, unless he pleads such fact.—COOS BAY, R. & E. R. & NAV. CO. v. SIGLIN, Oreg., 38 Pac. Rep. 192.

106. REPLEVIN — Purchase Money Mortgage—Evidence.—In replevin for an engine, where the defense was lawful possession under a purchase-money mortgage executed by plaintiff, evidence is admissible in rebuttal to show that at the time possession was taken the damage to plaintiff by reason of a false warranty on the sale left nothing due on the mortgage.—C. AULTMAN & CO. v. RICHARDSON, Ind., 38 N. E. Rep. 532.

107. RES JUDICATA.—A decree of a Probate Court, on an accounting by an administrator, that a fund in his hands belongs to certain persons, is a bar to a claim in another proceeding, by one who was a party to the accounting, that the fund belongs to other persons.—YOUNG v. BYRD, Mo., 28 S. W. Rep. 83.

108. SALE—Conditional Sale.—A contract of sale provided that the title to the property should remain in the seller until either the price was paid or a mortgage given on the property. The contract also provided that the seller was to furnish, free of cost, a certain other article. The mortgage when executed did not cover the latter article: Held, that a *bona fide* purchaser from the buyer acquired good title thereto as against the seller.—VAN ALLEN v. SMITH, Ind., 38 N. E. Rep. 542.

109. SET OFF.—A note executed by one partner for his individual debt cannot, without the express consent of the other partner, be received in evidence as a set off against an account due the firm, nor is it admissible where the claim has been assigned after suit brought, without the consent of the assignee.—WERNER v. HATTON, Kan., 38 Pac. Rep. 279.

110. TAX DEED. — Title under a tax sale cannot be maintained without an affirmative showing that the sale was made on a writ authorized by the judgment, and a recital in the sheriff's deed that the sale was so made is not evidence of such fact.—BURT v. HASSELMAN, Ind., 38 N. E. Rep. 598.

111. TAX LIEN—Priorities.—A purchaser under a judgment lien sale takes the land subject to a tax lien thereon. Plaintiff and another prosecuted an action to determine the ownership of land to judgment, resulting in defendant's favor, and subsequently applied for and obtained a new trial, as matter of right, under the statute, but which, failing to prosecute, they dismissed: Held, that such judgment is a bar to a subsequent action, involving the same subject-matter.—FERRIS v. BERKSHIRE LIFE INS. CO., Ind., 38 N. E. Rep. 609.

112. VENDOR AND VENDEE—False Representations—Rescission.—Unfulfilled representations of the vendor of land as to improvements he intends to make in the neighborhood are no ground for rescinding the contract, since they refer only to future acts.—DAY v. FT. SCOTT INV. & IMP. CO., Ill., 38 N. E. Rep. 567.

113. VENDOR AND VENDEE—Sale of Land.—In an action on a contract for the purchase of land from plaintiff, where it appeared that the title was perfect, and would not have been strengthened by a warranty from plaintiff, and that defendant knew, when the contract was made, that plaintiff was not the owner, it is no defense that the deed tendered was not signed by plaintiff.—ANDERSON v. TINSLEY, Tex., 28 S. W. Rep. 121.

114. VENDOR'S LIEN—Priority over Attachment.—The assignee of a note given as part of the purchase price in a sale of land, and representing, by parol agreement, a vendor's lien on such property, holds, as between his assignor, the grantor in such sale, and the purchaser, a valid lien, on the property sold, though he did not know of the existence of the parol agreement; and such lien takes priority of a subsequent attachment levied, on a judgment against such assignor, upon his rights in the property, for the reason that he has no longer record title to it.—HAMILTON-BROWN SHOE CO. v. LEWIS, Tex., 28 S. W. Rep. 100.

115. WILL—Devise to Trustee—Legal Title.—A devise to the testator's children for life, with contingent remainder to their children, a trustee being appointed "to hold the legal title during the estate for life, and for the preservation of the remainder," does not clothe the trustee with legal title to the remainder, but only with such title to the particular estate. The remainder created is a legal, not an equitable, estate.—BAXTER v. WOLFF, Ga., 20 S. E. Rep. 325.

116. WILL — Limitation Over.—A will gave land to testator's wife for life, to be divided at her death between his sons W and J, to be held by "them and their heirs, forever," and provided, further, that, "should my son J die leaving no children to inherit the land left him by me at his death," the parcel of land so left him should be sold, and the proceeds be equally divided, etc.: Held, that the right to sell the land devised to J, and to distribute the proceeds, was not dependent on the death of J without children during the life of his mother, but the land should be sold if J died at any time without children.—MARSHALL v. MARSHALL, S. Car., 20 S. E. Rep. 298.